

MASS. JB1.2: M85



Commonwealth of Massachusetts

Office of the Middlesex District Attorney



Martha Coakley
District Attorney

NOVEMBER 1999

MOTOR VEHICLE HOMICIDE TRAINING



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**Middlesex District Attorney's Office
Motor Vehicle Homicide Training
November 16, 1999
Bentley College**

8:00-8:30	Registration
8:30-8:45	Welcoming Remarks Martha Coakley, District Attorney
8:45-9:30	Middlesex Motor Vehicle Homicide Policies/Procedures Martha Coakley, District Attorney John McEvoy, First Assistant District Attorney Lynn Rooney, Deputy First Assistant District Attorney
9:30-10:30	Investigation/Evidence Collection Ed Bedrosian, Assistant District Attorney Margaret Peterson, Assistant District Attorney
10:30-10:45	Break
10:45-12:00	Reconstruction Experts Sergeant Stephen Walsh, Massachusetts State Police Adrienne Lynch, Assistant District Attorney
12:00-1:00	Registry Consequences Andrew Padellaro, Esq. Legal Counsel, Registry of Motor Vehicles
1:00-2:00	Lunch
2:00-3:00	Working with Families/Survivors Patrice Provitola, Chief Victim Witness Services Bureau Diane St. George, State Victim Service Coordinator MADD-MA George and Virginia Lester, Family Members
3:00-4:00	Trial Issues Tom O'Reilly, Assistant District Attorney

MOTOR VEHICLE HOMICIDE NOTIFICATION

In the event of a Motor Vehicle Homicide, call the following:

MEGAN STORING

Beeper (617) 882-4315
(617) 527-2150

-or-

CAMBRIDGE REGION

ADRIENNE LYNCH

Beeper (617) 339-9908
OR (617) 969-2352

FRAMINGHAM REGION

ED BEDROSIAN

Beeper (617) 468-3144
OR (617) 484-8995

LOWELL REGION

TOM O'REILLY

Beeper (617) 339-7343

§ 24G. Homicide by motor vehicle; punishment

(a) Whoever, upon any way or in any place to which the public has a right of access, or upon any way or in any place to which members of the public have access as invitees or licensees, operates a motor vehicle while under the influence of intoxicating liquor, or of marihuana, narcotic drugs, depressants, or stimulant substances, all as defined in section one of chapter ninety-four C, or the vapors of glue, and so operates a motor vehicle recklessly or negligently so that the lives or safety of the public might be endangered, and by any such operation so described causes the death of another person, shall be guilty of homicide by a motor vehicle while under the influence of an intoxicating substance, and shall be punished by imprisonment in the state prison for not less than two and one-half years or more than fifteen years and a fine of not more than five thousand dollars, or by imprisonment in a jail or house of correction for not less than one year nor more than two and one-half years and a fine of not more than five thousand dollars. The sentence imposed upon such person shall not be reduced to less than one year, nor suspended, nor shall any person convicted under this subsection be eligible for probation, parole, or furlough or receive any deduction from his sentence until such person has served at least one year of such sentence; provided, however, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, or the administrator of a county correctional institution, grant to an offender committed under this subsection a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at said institution; or to engage in employment pursuant to a work release program. Prosecutions commenced under this section shall neither be continued without a finding nor placed on file.

The provisions of section eighty-seven of chapter two hundred and seventy-six, shall not apply to any person charged with a violation of this subsection.

(b) Whoever, upon any way or in any place to which the public has a right of access or upon any way or in any place to which members of the public have access as invitees or licensees, operates a motor vehicle while under the influence of intoxicating liquor, or of marihuana, narcotic drugs, depressants or stimulant substances, all as defined in section one of chapter ninety-four C, or the vapors of glue, or whoever operates a motor vehicle recklessly or negligently so that the lives or safety of the public might be endangered and by any such operation causes the death of another person, shall be guilty of homicide by a motor vehicle and shall be punished by imprisonment in a jail or house of correction for not less than thirty days nor more than two and one-half years, or by a fine of not less than three hundred nor more than three thousand dollars, or both.

(c) The registrar shall revoke the license or right to operate of a person convicted of a violation of subsection (a) or (b) for a period of ten years after the date of conviction for a first offense. The registrar shall revoke the license or right to operate of a person convicted for a subsequent violation of this section for the life of such person. No appeal, motion for a new trial or exceptions shall operate to stay the revocation of the license or of the right to operate; provided, however, such license shall be restored or such right to operate shall be reinstated if the prosecution of such person ultimately terminates in favor of the defendant.

Added by St.1976, c. 227. Amended by St.1982, c. 373, § 9; St.1982, c. 376, §§ 1, 2; St.1986, c. 620, §§ 15, 16.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

§ 24L. Serious bodily injury by motor vehicle while under influence of intoxicating substance; penalties

(1) Whoever, upon any way or in any place to which the public has a right of access, or upon any way or in any place to which members of the public have access as invitees or licensees, operates a motor vehicle while under the influence of intoxicating liquor, or marihuana, narcotic drugs, depressants, or stimulant substances, all as defined in section one of chapter ninety-four C, or the vapors of glue, and so operates a motor vehicle recklessly or negligently so that the lives or safety of the public might be endangered, and by any such operation so described causes serious bodily injury, shall be punished by imprisonment in the state prison for not less than two and one-half years nor more than ten years and by a fine of not more than five thousand dollars, or by imprisonment in a jail or house of correction for not less than six months nor more than two and one-half years and by a fine of not more than five thousand dollars.

The sentence imposed upon such person shall not be reduced to less than six months, nor suspended, nor shall any person convicted under this subsection be eligible for probation, parole, or furlough or receive any deduction from his sentence until such person has served at least six months of such sentence; provided, however that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, or of the administrator of a county correctional institution, grant to an offender committed under this subsection a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at said institution; or to engage in employment pursuant to a work release program. Prosecutions commenced under this subdivision shall neither be continued without a finding nor placed on file.

The provisions of section eighty-seven of chapter two hundred and seventy-six shall not apply to any person charged with a violation of this subdivision.

(2) Whoever, upon any way or in any place to which the public has a right of access or upon any way or in any place to which members of the public have access as invitees or licensees, operates a motor vehicle while under the influence of intoxicating liquor, or of marihuana, narcotic drugs, depressants or stimulant substances, all as defined in section one of chapter ninety-four C, or vapors of glue, and by any such operation causes serious bodily injury, shall be punished by imprisonment in a jail or house of correction for not more than two and one-half years, or by a fine of not less than three thousand dollars, or both.

(3) For the purposes of this section "serious bodily injury" shall mean bodily injury which creates a substantial risk of death or which involves either total disability or the loss or substantial impairment of some bodily function for a substantial period of time.

(4) The registrar shall revoke the license or right to operate of a person convicted of a violation of subdivision (1) or (2) for a period of two years after the date of conviction. No appeal, motion for new trial or exception shall operate to stay the revocation of the license or the right to operate; provided, however, such license shall be restored or such right to operate shall be reinstated if the prosecution of such person ultimately terminates in favor of the defendant.

Added by St.1986, c. 620, § 17.

Motor Vehicle Homicide

Felony

M.G.L. c. 90, § 24G(a)



Commonwealth must prove:

1. Operation
2. Public way
3. Operation under the influence
- and-
4. Resulting in serious bodily injury
5. Resulting in death*

Penalty

No less than 2 1/2 yrs. No more than 15 yrs.
state prison **and** fine no more than \$5,000

-or-

no less than 1 yr. No more than 2 1/2 yrs.
House of Correction **and** fine no more than
\$5,000

Sentence cannot be reduced to less than one
year or suspended.

Misdemeanor

M.G.L. c. 90, § 24G(b)



Commonwealth must prove:

1. Operation
2. Public way
3. Operation under the influence
- or-
4. Reckless and negligent operation
5. Resulting in death*

Penalty

No more than 30 days no more than 2
1/2 yrs House of Correction

-or-

fine no less than \$300 no more than
\$3,000

-or-

both

License Revocation

First Offense, either section (a) or (b) - 10 Year Revocation

Second/Subsequent Offense - Life

* Death of a named person; established by death certificate

Serious Bodily Injury

Felony

M.G.L. c. 90, § 24L(1)



Commonwealth must prove:

1. Operation
2. Public way
3. Operation under the influence
- and-
4. Reckless and negligent operation
5. Resulting in death*

Penalty

No less than 2 1/2 yrs. No more than 10 yrs.
state prison **and** fine no more than \$5,000

-or-

No less than 6 months no more than 2 1/2 yrs.

House of Correction **and**
fine no more than \$5,000

Sentence cannot be reduced to less than
6 months or suspended.

Prosecutions under this
section may NOT be
CWOFF or placed on file.

Misdemeanor

M.G.L. c. 90, § 24L(2)



Commonwealth must prove:

1. Operation
2. Public way
3. Operation under the influence
4. Resulting in serious bodily injury*

Penalty

No more than 2 1/2 yrs. House of
Correction

-or-

fine no more than \$3,000

-or-

both

License Revocation

Both Sections - 2 year revocation

* Defined as one which creates a substantial risk of death or which involves either total disability or loss/impairment of a bodily function for a substantial period of time.

Mandated Procedures when Investigating Serious/Fatal Motor Vehicle Collisions

Intent

These procedures are guidelines to facilitate the efficient and uniform investigation of serious/fatal motor vehicle collisions throughout Middlesex County. The protocol has been put into place by the Middlesex County District Attorney's Office. If a department has policy or procedures that are in conflict with these, please feel free to call the District Attorney's office to resolve the conflict.

Definitions

The following definitions shall apply through out this document:

1. *Qualified Collision Reconstructionist*- a police officer who has completed at the minimum; basic and advanced accident reconstruction and maintains proficiency in this field through updated training (which includes annual certification or ACTAR certification) and who has been qualified as an expert in collision reconstruction in any court in the Commonwealth within the year preceding the date of the collision being investigated.
2. *Serious/Fatal Motor Vehicle Collision*- Any collision in which there is a fatality or in which medical personnel (or officers on the scene) feel there is a likelihood of death or serious bodily injury as defined in Mass. Gen. Laws ch. 90, § 24L(3)¹.
3. *"Trail" Physical Evidence*- This is the type of physical evidence which may show the route a vehicle(s) took either directly before or after an accident. Such evidence may include: skid marks, gauges in the roadway or other surface which the vehicle(s) passed over and/or damage to property which came in contact with the vehicle(s). It may also include the clothing of a pedestrian hit by a vehicle.

¹ "serious bodily injury" shall mean bodily injury which creates a substantial risk of death or which involves either total disability or the loss or substantial impairment of some bodily function for a substantial period of time. (see M.G.L. c. 90, § 24L(3))

Procedures

Whenever a department responds to the scene of a serious/fatal motor vehicle collision, the following investigation procedures should be followed:

1. The safety and emergency care of all parties involved in the accident is the primary duty of the officer(s);
2. If possible, at the same time (or immediately thereafter) emergency care is being administered on the scene, the officer(s) on the scene shall begin a criminal investigation:
 - A. The accident scene shall be treated as a crime scene and only the necessary personnel to ensure the safety and well being of those involved shall be allowed in the scene. To the extent possible officers should attempt to keep emergency personnel off of or away from "trail" physical evidence;
 - B. All physical evidence, including any vehicle(s), shall be left in place and not disturbed until the crime scene has been appropriately processed (i.e. a reconstruction, photographs and/or fingerprints, if necessary);
 - C. As soon as reasonably possible, officer(s) should note the environment at the time of the accident, i.e.- weather, lighting, road conditions and any changes in these during the course of the investigation;
 - D. Any available witnesses should be identified and interviewed as soon as reasonably possible.
3. As soon as reasonably possible a qualified collision reconstructionist shall be called to the scene to start an accident reconstruction:
 - a. If a department does not have a qualified collision reconstructionist either on duty and/or on staff, a State Police Reconstructionist should be called in to assist in the investigation.

I. A State Police Reconstructionist can be notified by calling the "duty" trooper for the State Police Troop which covers the jurisdiction in question.

II. If a state police reconstructionist is called, his/her duty will be to assist the local jurisdiction by completing to the best of that trooper's ability (or assisting a local officer in completing) a reconstruction of the accident scene. Overall responsibility of the investigation remains with the local jurisdiction.

LEGAL ISSUES SURROUNDING THE INITIAL STAGES OF MOTOR VEHICLE HOMICIDE INVESTIGATIONS

The Vehicle

Seizure From The Accident Scene

When police respond to a motor vehicle accident, they may remove the suspect's vehicle if it is on the street, impeding traffic, or threatening public safety. See Commonwealth v. Mamacos, 409 Mass. 635, 639 (1991). In the rare situation that the vehicle is not on a street, impeding traffic, or threatening public safety, however, police should get a warrant to seize it. See Id. (noting that the rationale for police authority to seize and remove the vehicle from the scene is based, in part, on police traffic-control responsibilities).

Seizure From Location Other Than Accident Scene

In most instances, police should get a search warrant before seizing a vehicle from a location other than the accident scene, such as someone's private driveway. See Commonwealth v. Juvenile, 411 Mass. 157, 160-166 (1991). Although police may seize and search the car without a warrant in this situation if they have probable cause plus exigent circumstances, the mere fact that the item to be searched is a vehicle does not, in and of itself, give an officer exigent circumstances. Id. at 164-166. Exigent circumstances exist, for example, if police just learned of the vehicle's location and the suspect is not in custody and police do not know of his whereabouts. See Id.

Police may make observations in plain view of the outside of the vehicle from a place where they are legally entitled to be, such as a public street, without a warrant. See Id. However, police should get a warrant before even looking at the outside of a vehicle from a location where a suspect has a reasonable expectation of privacy. See Id. Whether a person has a reasonable expectation of privacy in the outside of his vehicle parked in a private driveway will depend in large part on the degree the vehicle is visible from the street. See Id.

Searching The Vehicle

If police seized the car directly and immediately from the accident scene due to the fact that the vehicle was on the street, impeding traffic, or threatening public safety, then they may search the equipment and safety features of the vehicle without a warrant. See Mamacos, 409 Mass. at 639 (where Court held that defendant did not have a reasonable expectation of privacy in the brakes of his truck after the truck was involved in a fatal accident and was removed from the highway by police). If police, however, want to search the vehicle for more than the equipment and safety features of the vehicle, it is probably better to get a warrant to do so. Also, if police seized the vehicle from a location other than the accident scene, they should get a search warrant before searching the vehicle at all. See Juvenile, 411 Mass. at 160-166. In that situation, police may simply ask for permission to seize and search the car in the same warrant. If police seize the vehicle from a location other than the accident scene pursuant to probable cause and exigent circumstances, they should still get a warrant to search it. See Commonwealth v. Agosto, 428 Mass. 31, 34-35 (1998).

Retention Of The Vehicle After Seizure

Once police properly seize and search the vehicle, they should not get rid of it until the suspect and/or his lawyer has had the opportunity to inspect it. See Commonwealth v. Chase, 42 Mass. App. Ct. 749, 757 (1997). Otherwise, important evidence against the defendant may be excluded at trial. See Id. Police may hold onto a properly seized vehicle in order to conduct a proper search of the vehicle even after the owner requests that the vehicle be returned. See Mamacos, 409 Mass. at 640.

The Suspect's Blood/G.L. C. 263, §5A Rights

Obtaining a sample of the suspect's blood may be accomplished in a number of ways. First, if the suspect is injured and taken to the hospital, the hospital may take his blood. If the hospital takes the suspect's blood to assist in the achievement of any medical goal or pursuant to established hospital protocol, the record of the test results with respect to blood alcohol level are admissible at trial under G.L. c. 233, §79. See Commonwealth v. Sheldon, 423 Mass. 373, 376-377 (1996). Just because the hospital does not take the suspect's blood in this manner, however, does not mean that police cannot get a sample of the suspect's blood; it just means that the prosecutor will not be able to rely on G.L. c. 233, §79 at trial to admit the records and, instead, may have to call a physician to testify. Police may get the defendant's consent to obtain a blood sample and/or obtain a search warrant to do so. See Commonwealth v. Angivoni, 383 Mass. 30, 32-35 (1981); Commonwealth v. Lavigne, 418 Mass. 831 (1994). Because the voluntariness of the consent may be called into question, it is advisable to obtain a search warrant as opposed to relying on consent. Also, because time is of the essence, it would be a good idea for police to establish a "form" affidavit to obtain a blood sample, which could be tailored to the particular case at hand.

The defendant may also have his blood tested after being advised of his rights under G.L. c. 263, §5A. With respect to 263, §5A rights, it is important to inform the suspect/defendant of his right to obtain an independent medical exam even if he has already received some form of medical treatment following the accident. See Commonwealth v. King, 429 Mass. 169, 178 n.6 (1999).

The Suspect's Statements

Defendants in motor vehicle homicide cases often try to argue that their statements should be suppressed because they were not voluntary, due to their emotional and hysterical state after the accident, or because they were injured and/or incoherent. See e.g. Commonwealth v. Koney, 421 Mass. 295, 305 (1995); Commonwealth v. Smith, 35 Mass. App. Ct. 655, 656-659 (1993); Commonwealth v. Doyle, 12 Mass. App. Ct. 786, 789-795 (1981). Therefore, it is especially important in these cases to be acutely aware of Miranda issues. Cf. Commonwealth v. Atencio, 12 Mass. App. Ct. 747, 749-751 (1981). For example, police should not lead the suspect to believe that medical treatment is available only if the suspect gives a statement or confession to police. See Commonwealth v. Magee, 423 Mass. 381, 388 (1996).

Citation Issues

Courts generally will not dismiss a motor vehicle homicide case for noncompliance with G.L. c. 90C, §2. The very serious nature of the crime tends to minimize the importance of absolute observance of the procedures. See Commonwealth v. Cameron, 416 Mass. 314, 317 (1993). Nevertheless, every effort should be made to comply with the statute in order to avoid any possibility of dismissal.

ACCIDENT RECONSTRUCTION

Name

Work

Position

Time

Educational Background: undergraduate, graduate, academy, etc.

Work experience in the area of accident investigation/reconstruction:

Specialized Training:

Specialized Accreditation:

Professional Affiliations:

Teaching Experience:

Rectification: what, how, how often

Describe the *practical* aspects of your training: field testing, crash testing (cars actually driven in certain ways or crashed in certain ways to observe how a car travels in a certain situation, what type of marks or patterns result from a car being operated in a certain manner, what happens to car after various types of impacts; etc.)

of accidents investigated

of accident reconstructions you conducted

testified as a expert in accident reconstruction:

of times

counties/courts

Define Accident Reconstruction

What information/materials are available to you

personal observations

measurements, calculations

photos

witness statements

police reports

What do you look for when you reconstruct an accident?

Investigate a motor vehicle homicide (fatal) which occurred on March 12, 1999 in Framingham?

How did you become involved?

When did you become involved?

**What did you do after being assigned?
responded to FPD**

What information/materials were made available to you

police reports:

accident report(s)

photos:

witness statements:

Responded to scene: South Street, Framingham, MA

PUBLIC WAY: describe the number of lines, markings, posted speed

Define striations: a *pattern* left by a tire
factors which can effect the type of pattern:
1. direction of travel
2. speed of car
3. the status of the tire(s): rotating v. locked/braking

Define scuff marks: *type of pattern*
occurs when the tire is not rotating or is locked
example: driving around a corner too fast, tires "squealing"
aka: yaw mark (usually only relevant when det. speed)

Define skid marks: *type of pattern*
occurs when the tire is not rotating or is locked
example: braking, damaged

Define gouge marks: there are three aspects of an impact:

- 1. initial engagement**
- 2. maximum engagement**
- 3. disengagement:**

gouge marks generally occur at maximum engagement impact when the car crushes downward toward the pavement, comes in contact with the pavement and makes a mark in the pavement

gouge marks can be indicative of the *area* of impact

Observations made in the area of the crash site on South Street Framingham both through your personal observation and your examination of the photographs of the scene:

Observed certain marks in roadway:

- 1. gouge marks:**

significant/indictive of: *area* of max. engagement or impact

- 2. scuff marks:**

starting point: direction of travel: ending point: significance

As a result of your examination of the materials submitted to you and the scene, did you prepare anything

- 1. charts:**

how prepared

where

to scale?

ID/ADMIT

TYPES OF TESTS/CALCULATIONS

a. Coefficient of Friction

To det. how slippery/sticky road conditions were at the time of the accident

briefly describe *how* such a determination is made

***why* is determining the coefficient of friction important**

**how doe you compare the coefficient of friction b/t one road surface and another?
formula?**

recreating deliberate breaking?

At what point do wheels start to:

skid:

slide:

b. Stopping Distance

to det. how far b/f the accident the brakes would have been applied to avoid impact

c. Swerve Distance

to det. the distance needed to swerve to avoid accident/impact

d. Lane Change

how much room was available to change and still avoid impact

e. Calculations for Speed

Describe what, if anything you need in order to accurately determine speed

**1. need to examine the scene immediately or soon after the crash to examine for
particular marks which would be indicative of speed**

**2. in addition, or in the alternative, need accurate measurements to be taken
immediately or soon after the crash**

Describe samples collected

Who, What, How, Why, What was done with samples?

CAUSE of the accident

Based upon your education, training, certification, experience, examination of the scene, the police reports, the witness statements, the photographs and the physical evidence in this case, do you have an opinion within a reasonable degree of scientific certainty as to the *cause* of the mv. fatality?

How did you arrive at your opinion?

What is your opinion?

OPERATOR

Based upon your education, training, certification, experience, examination of the scene, the police reports, the witness statements, the autopsy report, the defendant's medical records and the physical evidence in this case, do you have an opinion within a reasonable degree of scientific certainty as to who was the *operator* of the D's m.v. at the time of the crash?

How did you arrive at your opinion?

What is your opinion

MOVEMENT OF OCCUPANTS

Based upon your education training, certification, experience, examination of the scene, the police reports, the witness statements, the autopsy report, the defendant's medical records and the physical evidence in the case, do you have an opinion within a reasonable degree of scientific certainty as to the *movement* of the occupant's of the D's car between the time when the D's car struck MW's car and when the D's car slammed into the tree?

How did you arrive at your opinion?

What is that opinion?

HYPOTHETICALS (EJECTION)

Assume persons are in car. traveling at high rate of speed , along a straight roadway, with no obstructions or contact with anything, would those persons suddenly become ejected?

NO

Or what, in those circumstances, would cause them to become suddenly ejected?

Why not?

Assume persons are in car, traveling at a high rate of speed, along a straight roadway, when car begins to slide or skid BUT has no contact with anything, would those persons suddenly become ejected? NO

**Or what, in those circumstances, would cause them to become suddenly ejected?
NOTHING!**

Why not?

Finally, assume persons are in a car, traveling at a high rate of speed, along a straight roadway, when the car begins to slide or skid BUT then the car is abruptly stopped by something, could any of those persons be suddenly ejected?

Why?

What makes the 3rd hypo. different from the 1st and 2nd hypos?

OPERATION

Direct/Circumstantial evidence

Direct:

eyewitness

Circumstantial:

D. driving

No one else driving

D. owned the mv

D. had been driving his mv all night

D. "survived"

D's injuries consistent with being seated in driver's seat



Richard D. Lyons
Registrar

The Commonwealth of Massachusetts

Registry of Motor Vehicles

One Copley Place, 4th Floor, Boston 02116

Mail:
PO Box 199150
Boston, MA 02119-9150

REGISTRY OF MOTOR VEHICLES

Presented By:

Andrew M. Padellaro

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Registry of Motor Vehicles

(617)351-9947

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COMMON MISCONCEPTIONS ABOUT THE REGISTRY

#1: Whether or not a suspension occurs is “Up to the Registry.”

Wrong! A common mistake made is that many people erroneously believe that despite being found guilty or responsible of a particular offense, the Registrar has discretion in deciding whether or not to suspend. As a rule of thumb, every criminal motor vehicle offense carries a mandatory suspension, and the Registrar has no authority to waive such action. Courts and attorneys do defendants a disservice by informing them that their license status is NOT connected to the court case.

Exception: MGL c. 90, §10 (unlicensed) carries no mandatory suspension.

#2: Will a Continued Without a Finding (CWOFF) initiate a suspension?

No. The Registrar may only take mandatory action upon a conviction, delinquent, or responsible finding.

Exception: Operating Under the Influence (OUI) cases under c. 90, §24D are the exception to the rule, and a CWOFF will count as a conviction for all suspension, reinstatement fee, and future multiple offense purposes. The RMV may also take discretionary action for under age liquor and ID falsification offenses without a conviction.

#3: When are hardship licenses available?

Hardship licenses are called by many different names: Limited licenses, work licenses, day licenses, “7 to 7” licenses, driving privileges, and Cinderella Licenses. They are all the same thing. Hardship licenses are available ONLY on three types of suspensions: OUI offenses, 94C drug offenses, and Habitual Traffic Offender suspensions. They are NEVER available at the start of a suspension, regardless of how severe the person’s hardship may be. For each suspension, the law will mandate a minimum amount of time before a hardship application may be made.

#4: Reinstatement Fees are arbitrarily decided by the Registry:

False. Reinstatement fees are set by statute, and are specifically set out in M.G.L. c. 90, §33. Unlike court fees, there is no statutory authority to waive any such fees. Generally, the reinstatement fees are:

Minor Suspensions:	\$50
Majors (Criminal Violations)	\$300
OUI’s	\$300 (1st Offense)
	\$500 (2nd Offense)
	\$1,000 (3rd Offense)

#5: How do courts send notice of findings to the Registry?

The only documents accepted by the Registry are either a copy of the official Motor Vehicle Citation issued by the police, or a Motor Vehicle Abstract (see sample on next page). **DOCKET SHEETS ARE NOT ACCEPTED.** While docket sheets are the “bread and butter” of the court system, too often they have notations and findings that amend, reduce, or even introduce new charges. This leaves too much room for error when it comes time for Registry personnel to enter the findings. To reduce errors, abstracts were devised to send to the Registry only the information needed to ascertain the proper driver, and indicate only the final charges and findings.

#6: How does the Registry run Chemical Test Refusal suspensions with 24Ds?

They will be run on and after in every single case. They are treated as two separate and distinct violations, and Chemical Test Refusal Suspensions do NOT terminate with the disposition of a case, unlike breath test failures.

Massachusetts Uniform Citation

MASSACHUSETTS UNIFORM CITATION

DATE CITATION MADE		AGENCY CODE	OFFICER I.D. NUMBER	COURT CODE	TYPE OF CITATION MOTOR VEH <input type="checkbox"/> OPER. <input type="checkbox"/> OWNER		E 035-6-1	
VIOLATOR	MOTOR VEHICLE LICENSE NO. OF VIOLATOR			STATE	CLASS	CDL LICENSE	SEX	SSN (For non motor veh. citation only)
	VIOLATOR NAME (Last)			(First)	(Initial)	DATE OF BIRTH		
	ADDRESS			CITY/TOWN		STATE	ZIP	
	PLATE TYPE MOTOR VEHICLE REGISTRATION NO.			STATE	CDL VEHICLE			
M V	HAZ. MAT. NAME AND TYPE			YEAR	COLOR			
	DATE OF OFFENSE			LOCATION OF OFFENSE (include city or town)		TIME OF OFFENSE <input type="checkbox"/> AM <input type="checkbox"/> PM ACCIDENT <input type="checkbox"/> YES <input type="checkbox"/> NO		
OFFENSE (S)	A	CHARGE	<input type="checkbox"/> CRIM <input type="checkbox"/> CIVIL	DESCRIPTION OF OFFENSE		ASSESSMENT	NOTICE TO VIOLATOR SEE REVERSE SIDE FOR INSTRUCTIONS NOTICE TO OFFICER ENTER ASSESSMENT AND TOTAL DUE TO ONLY IF YOU CHECK ALL OTHER VIOLATIONS ENTER COURT ADDRESS BELOW ONLY IF YOU CHECK CRIMINAL APPLICATION	
	B		<input type="checkbox"/> CRIM <input type="checkbox"/> CIVIL			\$		
	C		<input type="checkbox"/> CRIM <input type="checkbox"/> CIVIL			\$		
	D. SPEED	<input type="checkbox"/> 90/17 <input type="checkbox"/> 10/3	CIVIL	MPH IN A ZONE	<input type="checkbox"/> POSTED <input type="checkbox"/> NOT POSTED	<input type="checkbox"/> CLOCKED <input type="checkbox"/> RADAR <input type="checkbox"/> ESTIMATED		
OFFICER CHECK ONE ONLY		<input type="checkbox"/> ALL CIVIL VIOLATIONS <input type="checkbox"/> CRIMINAL APPLICATION (See instruction B on back)		<input type="checkbox"/> ARREST <input type="checkbox"/> WARNING (No action required by violator)		TOTAL DUE		COURT ADDRESS
OFFICER CERT. FEE		<input type="checkbox"/> IN HAND TO VIOL. <input type="checkbox"/> MAILED TO VIOL. <input type="checkbox"/> IN HAND TO VIOLATOR'S AGENT						
VIOLATOR/AGENT ACKNOWLEDGES RECEIPT OF CITATION								

Registry of Motor Vehicles Abstract

DC-MV-6 (2/88)		COMMONWEALTH OF MASSACHUSETTS SUPPLEMENTAL MOTOR VEHICLE ABSTRACT		CITATION NUMBER (one number only)	
VIOLATOR NAME (LAST, FIRST, INITIAL)		DATE OF BIRTH		LICENSE NUMBER	
STREET ADDRESS		REGISTRATION NUMBER		STATE	
CITY/TOWN		STATE		ZIP CODE	
DATE OF VIOLATION		LOCATION OF VIOLATION		POLICE DEPARTMENT	
DOCKET NUMBER	OFFENSE	CHAPTER	SECTION	INVOICE DATE OF JUDGMENT	COMMENT
SAMPLE					
INSTRUCTIONS TO COURT:					
1. Use a separate form for each citation number. 2. To update previous abstract, fill in shaded areas only. 3. To use to report a conviction for which no citation was written, fill out as completely as possible. REGISTRY COPY 4. Certify abstract with clerk-magistrate's facsimile.					
COURT ID		CERTIFIED BY CLERK-MAGISTRATE AS A TRUE RECORD			

SUSPENSION STATUTE REFERENCE GUIDE

<u>Offense</u>	<u>Chapter</u>	<u>Section</u>
Accident Reports-Duty to file	c. 90	§ 26
Address Change	c. 90	§ 26A
Admin Per Se	c. 90	§ 24(1)(f)(2)
Alcohol Program	c. 90	§ 24D
Bars Overserving-Court Reporting of	c. 90	§ 24J
Bet or Wager on operation	c. 90	§ 24(2)(a)
Board Of Appeals	c. 90	§ 28
Certification of Breath Test Operators	c. 90	§ 24K
Chemical Test Refusals	c. 90 CMR 540 11.02	§ 24(1)(f)(1)
Citations-Hearings	c. 90C	§ 3
Drug Convictions	c. 90 CMR 540 20.03	§22(f)
DWI Liquor	c. 90	§24
(Suspension)	c. 90	§24(1)(c)(1-3)
DWI Drugs	c. 90	§24L
DWI Serious Injury	c. 90	§24L

<u>Offense</u>	<u>Chapter</u>	<u>Section</u>
Endangering\Reckless Operation	c. 90	§24(2)(a)
False Statements-RMV applications	c. 90	§24(2)(a)
Forged\Altered license or registration	c. 90	§24B
Habitual Traffic Offender	c. 90	§22F
Immediate Threats	c. 90	§22(a)
Improper Operation\Incompetent person	c. 90	§22(b)
Leaving the Scene Personal Injury	c. 90	§24(2)(a ¹ / ₂)(1)
(Suspension)	c. 90	§24(2)(a ¹ / ₂)(3)(b-c)
Leaving Scene of Fatality	c. 90	§24(2)(a ¹ / ₂)(2)
(Suspension)	c. 90	§24(2)(a ¹ / ₂)(3)(b-c)
Leaving the Scene Property Damage	c. 90	§22A
Minor Transporting Alcohol	c. 138	§34C
Minor Attempting to Purchase Alcohol	c. 138	§34A
NDR\OOS Incident Authority	c. 90	§22(c)
No Liability Policy	c. 90	§34J
Open Container	c. 90	§24I
Operating After Suspension\Revocation	c. 90	§23
Operating Unlicensed	c. 90	§10
Property Damage Claim	c. 90	§22A

<u>Offense</u>	<u>Chapter</u>	<u>Section</u>
Refusing to Submit to PO	c. 90	§25
Reinstatement Fees	c. 90	§33
Surchargeable Events-Seven	c. 175	§113B
Surchargeable Events-Five	c. 175	§113B
Speeding	c. 90	§17
Theft & Concealment	c. 266	§28
Three Speeds	c. 90	§20
Tinted Glass	c.90	§9D
Use without Authority	c. 90	§24(2)(a)
Use of another license\ID	c. 138	§34B
(Suspension)	c. 90	§22(e)
Vehicular Homicide w\alcohol & neg.	c. 90	§24G(a)
Felony (Suspension)	c. 90	§24G(c)
Vehicular Homicide w\alcohol or neg.	c. 90	§24G(b)
Misdemeanor (Suspension)	c.90	§24G(c)

Types of Suspensions

Mandatory Suspensions:

1. Suspensions for Convictions of Criminal Motor Vehicle Violations
{Exception: MGL c. 90, §10 Operating Without a License}
2. Suspensions for MGL c. 94C drug offense convictions
3. Suspensions for out of state violations and suspensions pursuant to M.G.L. c. 90, §22(c)
4. Cumulative suspensions arising due to too many violations:

Three Speeds: Three speeding violations within one year incurs a 30 day suspension
MGL c.90, §20

Five Surchargables: Any combination of five surchargable events (tickets or accidents)
MGL c.175, §113B within 3 years requires completion of a remedial driving course

Seven Surchargables: Any combination of seven surchargable events (tickets or
MGL c.175, §113B accidents) within 3 years incurs a 60 days suspension and
completion of a remedial driving course

Habitual Traffic Offender: Any combination of twelve moving violations or three
MGL c.90, §22F major moving violations (generally any criminal moving
violation) within 5 years incurs a four year suspension.
Note: HTOs do NOT include accident surcharges

Discretionary Suspensions:

Immediate Threats: Pursuant to M.G.L. c. 90, §22(a), the Registrar may suspend a
person indefinitely if he has cause to believe their continued
operation may endanger the safety of the public.

Improper Operation: Pursuant to M.G.L. c. 90, §22(b), the Registrar may suspend a
person for up to 30 days for improper operation of a motor vehicle,
or indefinitely where a medical or mental condition exists.

M.G.L. c. 90, §22(c)

Mandates suspension action on out of state offenses by Massachusetts's Drivers in two ways:

1. When another state has suspended a Mass. Driver, we must also suspend until the other state clears the driver.
2. We must apply the same period of suspension as if the incident happened in Mass., even if the other state issued no suspension at all.

(c) If the registrar receives official notice, in any form which the registrar deems appropriate, including electronic transmissions, that a resident of the commonwealth or any person licensed to operate a motor vehicle under the provisions of this chapter has been convicted in another state or country of a motor vehicle violation, the registrar shall give the same effect to said conviction for the purposes of suspension, revocation, limitation or reinstatement of the right to operate a motor vehicle, as if said violation had occurred in the commonwealth.

As used in this section "motor vehicle violation" shall mean a violation of law, regulation, by-law, or ordinance, except a violation related to parking, the nature of which would have been reported to the registrar pursuant to chapters eighty-nine, ninety, ninety C, or one hundred and seventy-five, if said violation had occurred in the commonwealth.

If the registrar receives official notice, in any form which the registrar deems appropriate, including electronic transmissions, that a resident of the commonwealth, or any person licensed to operate a motor vehicle under the provisions of chapter ninety, or any applicant therefor has had a license or right to operate suspended or revoked in another state or country, the registrar shall not issue a license to said person, and if a license has already been issued the registrar shall immediately revoke said license, without a prior hearing. However, if said license or right to operate is subsequently reinstated by such other state or country, the person may apply to the registrar for reinstatement of said license in the commonwealth.

(Chgd. by L.1990, chap. 256(1), eff. 1/31/91.)

M.G.L. c. 90, §22(f)

Mandates suspension action on all c. 94C drug convictions.
540 C.M.R. 20.03 sets forth the duration of each suspension.

(f) The registrar shall suspend, without hearing, the license or right to operate of a person who is convicted of a violation of any provision of chapter ninety-four C or adjudged a delinquent child by reason of having violated any provision of chapter ninety-four C; provided, however, that the period of such suspension shall not exceed five years; provided further, that any person so convicted who is under the age of eighteen years or who is adjudged a delinquent child by reason of having violated any provision of chapter ninety-four C, and is not licensed to operate a motor vehicle shall, at the discretion of the presiding judge, not be so licensed for a period no later than when such person reaches the age of twenty-one years. (*Added by L.1989, chap. 241, eff. 9/6/89.*)

540 CMR 20.03 - Schedule of Suspensions for Drug Convictions

20.03: Suspensions Required By M.G.L. c. 90, s. 22 (f) Based Upon a Conviction of M.G.L. c. 94C.

(1) The duration of any suspension of the license or right to operate a motor vehicle pursuant to M.G.L. c. 90, s. 22 (f) shall be determined according to the following schedule:

(a) One Year Suspensions:

M.G.L. c. 94C, s. 5	Dispensing Controlled Substances
M.G.L. c. 94C, s. 8	Research Projects
M.G.L. c. 94C, s. 21	Prescriptions Violations
M.G.L. c. 94C, s. 22	Prescriptions Violations
M.G.L. c. 94C, s. 24 (a)	Practitioner's Violations
M.G.L. c. 94C, s. 25	Practitioner's Violations
M.G.L. c. 94C, s. 26	Practitioner's Violations
M.G.L. c. 94C, s. 27	Possession of an Instrument for Administering Controlled Substances by Injection
M.G.L. c. 94C, s. 35	Being Present Where Heroin is Kept
M.G.L. c. 94C, s. 32I (a)	Sale of Drug Paraphernalia
M.G.L. c. 94C, s. 32G	Sale of Counterfeit Substances
M.G.L. c. 94C, s. 34	Illegal Possession of a Class A Substance
M.G.L. c. 94C, s. 34	Illegal Possession of a Class B Substance
M.G.L. c. 94C, s. 34	Illegal Possession of a Class C Substance
M.G.L. c. 94C, s. 34	Illegal Possession of a Class D Substance
M.G.L. c. 94C, s. 34	Illegal Possession of a Class E Substance
M.G.L. c. 94C, s. 40	Conspiracy to Violate the Controlled Substance Laws

(b) Two Year Suspensions:

M.G.L. c. 94C, s. 32C (a)	Possession of a Class D Substance with intent to Distribute/ Manufacture/Cultivate
M.G.L. c. 94C, s. 32D (a)	Possession of a Class E Substance with intent to Distribute/ Manufacture/Cultivate
M.G.L. c. 94C, s. 32I (a)	Sale of Drug Paraphernalia to Minors
M.G.L. c. 94C, s. 33 (a)	Using False Registration Number
M.G.L. c. 94C, s. 33 (b)	Uttering a False Prescription
M.G.L. c. 94C, s. 37	Larceny of a Controlled Substance

(c) Three Year Suspensions:

M.G.L. c. 94C, s. 32 (a)	Possession of a Class A Substance with Intent to Distribute or Manufacture
M.G.L. c. 94C, s. 32A (a)	Possession of a Class B Substance with Intent to Distribute or Manufacture
M.G.L. c. 94C, s. 32A (c)	Possession of Cocaine with Intent to Distribute or Manufacture
M.G.L. c. 94C, s. 32B (a)	Possession of a Class C Substance with Intent to Distribute or Manufacture
M.G.L. c. 94C, s. 32C (b)	Second or Subsequent Conviction of Possession of a Class D Substance
M.G.L. c. 94C, s. 34D (b)	Second or Subsequent Conviction of Possession of a Class E Substance

(d) Four Year Suspensions:

M.G.L. c. 94C, s. 32 (b)	Second or Subsequent Conviction of Possession of a Class A Substance with Intent to Distribute/Manufacture/Cultivate
M.G.L. c. 94C, s. 32A (b)	Second or Subsequent Conviction of Possession of a Class B Substance with Intent to Distribute/Manufacture/Cultivate
M.G.L. c. 94C, s. 32B (b)	Second or Subsequent Conviction of Possession of a Class C Substance with Intent to Distribute/Manufacture/Cultivate
M.G.L. c. 94C, s. 32A (d)	Second or Subsequent Conviction of Possession of Cocaine

(e) Five Year Suspensions:

M.G.L. c. 94C, s. 32E	Convictions of Trafficking, Manufacturing, Distributing or Dispensing of a Class A Substance
M.G.L. c. 94C, s. 32E	Convictions of Trafficking, Manufacturing, Distributing or Dispensing of a Class B Substance
M.G.L. c. 94C, s. 32E	Convictions of Trafficking, Manufacturing, Distributing or Dispensing of a Class D Substance
M.G.L. c. 94C, s. 32F	Unlawful Manufacture, Distribution, Dispensing and Sales to Minors of a Class A, B, or C Substance
M.G.L. c. 94C, s. 32J	Controlled Substance Violation in, on, or near School Property
M.G.L. c. 94C, s. 32K	Inducing or Abetting a Minor to Distribute or Sell Controlled Substances

- (2) The duration of any suspension of the license or right to operate a motor vehicle pursuant to M.G.L. c. 90, s. 22 (f) for any violation of M.G.L. c. 94C not specifically listed in the schedule appearing in s. (1) above shall be for a period of one year.

Junior Operator Suspension Issues

VIOLATION OF PASSENGER RESTRICTIONS:

Applies To: Any person holding a Junior Operator's License {JOL}

Provisions: No JOL holder may operate for the first 6 months of his holding the license with any passenger under age 18 (excluding immediate family members), **unless** they are also accompanied by a licensed driver in the front passenger seat, over age 21, who has at least one years driving experience.

NOTE: The 6 month period of the restriction is stayed during any suspension of the JOL.

Penalties:
1st Offense: 30 Day Suspension
2nd Offense: 60 Day Suspension
3rd Offense: 90 Day Suspension

NOTE: These penalties run on and after any penalty that may arise out of the SAME incident.

VIOLATION OF TIME RESTRICTIONS:

Applies To: Any person holding a Junior Operator's License.

Provisions: No JOL holder may operate between 12:00 am and 5:00 am without a parent or legal guardian present. Law enforcement officers may only enforce this prohibition from 12:00 am to 1:00 am, and 4:00 am to 5:00 am when there has been a stop for some other offense.

Penalties: The JOL operator violation this provision is subject to being charged with being unlicensed under M.G.L. c. 90, §10. **There are no suspension penalties applied to this JOL violation.**

VIOLATION OF SPEED AND DRAG RACING LAWS:

Applies To: Any person holding a Junior Operator's License.

Provisions: Any JOL holder convicted of a multiple speeding violations (M.G.L. c. 90, §17, §17A and §18) or Drag Racing (M.G.L. c. 90, §17B) will incur a license suspension. The violations must have occurred on or after 11/4/98.

NOTE: There is no requirement that the two or more offenses be the same charge.

EXAMPLE: One c. 90, §17 (Speed) and one c. 90, §17B (Drag Racing) make the 2nd one a multiple offense.

Penalties:
2nd Offense: 180 Day Suspension
3rd Offense: 1 Year Suspension

NOTE: These penalties run on and after any penalty that may arise out of the SAME incident.

YOUTH ALCOHOL PROGRAM SUSPENSION

OPERATORS UNDER AGE 18

Applies To: Any person under age 18. Does NOT require the offender to hold a JOL.

Provisions: An additional suspension that applies to any driver under age 18 who REFUSES or FAILS (.02 or above) a breath test.

Penalties: 1 year suspension, in addition to the initial refusal or failure suspension.

EXAMPLE: Youth under age 18 who is a first offender and refuses a chemical test faces:
180 Day Suspension for refusal pursuant to M.G.L. c. 90, §24(1)(f)(1) **and**
1 Year Suspension for the Youth Alcohol Program requirement pursuant to M.G.L. c.90, §24P

NOTE: Entry in a Youth Alcohol Program will reduce the YAP suspension to 180 days.

OPERATORS AGES 18 TO 21

Applies To: Any person ages 18 to 21. Does NOT require the offender to hold a JOL.

Provisions: An additional suspension that applies to any driver ages 18 to 21 who REFUSES or FAILS (.02 or above) a breath test.

Penalties: 180 day suspension, in addition to the initial refusal or failure suspension.

EXAMPLE: Youth under age 18 to 21 who is a first offender and refuses a chemical test faces:
180 Day Suspension for refusal pursuant to M.G.L. c. 90, §24(1)(f)(1) **and**
180 Day Suspension for the Youth Alcohol Program requirement pursuant to M.G.L. c.90, §24P

NOTE: Entry in a Youth Alcohol Program will waive the YAP suspension.

ADDITIONAL PROVISIONS FOR C. 90, S. 24 CONVICTIONS

Applies To: Any person under age 18. No JOL required.

Provisions: Any person convicted of a charge under M.G.L. c. 90, §24, §24G, §24I or §24L that has NOT received a Youth Alcohol Program suspension from the same incident.

Penalties: 1st Offense: 180 Days
 2nd Offense: 1 Year

MINOR PURCHASING OR ATTEMPTING TO PURCHASE ALCOHOL

Applies To: Any person under age 21.

Provisions: Pursuant to M.G.L. c. 138, §34A, prohibits persons under age 21 from purchasing, attempting to purchase, inducing another to purchase, or altering an ID to purchase alcohol.

Penalties: Increases the suspension to 180 days (previously was 90 days).

Junior Operator Licensing Issues

In addition to the additional suspension provisions, Junior Operator Permit holders will face additional requirements BEFORE they obtain their Junior Operator's License:

ADDITIONAL DRIVER'S EDUCATION AND DRIVING EXPERIENCE:

In addition to 30 hours of classroom Driver's Ed instruction, the seeker of a Junior Operator's License must have 6 hours of behind the wheel instruction, 6 hours of observing another Permit holder's behind the wheel instruction, and have a parent or guardian certify that the Permit holder has received an additional 12 hours of supervised driving.

SIX MONTH CLEAN DRIVING RECORD:

Before being allowed to take a road test, a Junior Operator Permit holder must have a clean driving record for 6 months.

NOTE: The law specifically states that any Continued Without a Finding or Filing disposition will count as a conviction for purposes of determining whether or not the operator has a clean driving record. The law also requires the operator to have held a VALID Learner's Permit for 6 months, so the 6 month clean period would start after any suspensions or revocations have expired.



M.G.L. c.90, §24

The Drunk Driving Law

OUI LAW PROVISIONS

FIRST OFFENSE

- Incarceration: Not more than 2 1/2 years House of Correction
- Fine: \$500 -\$5,000
- License suspended for 1 year, work/education hardship considered in 3 months, general hardship in 6 months.

Alternative disposition

- Probation with mandatory participation in alcohol-drug education program paid for by defendant
 - License suspended for 45 to 90 days (210 days for drivers under age 21)
 - Available for 2nd offenses within 6-10 year time frame upon finding by court
- NOTE:** 2 year loss of license is mandatory, however

SECOND OFFENSE

- Incarceration: Not less than 60 days (30 day mandatory), not more than 2 1/2 years
- Fine: \$600-\$10,000
- License suspended for 2 years, work/education hardship considered in 6 months, general hardship in 1 year

Alternative disposition

- 2 years probation
- 14 day confined treatment program paid for by defendant
- License suspended for two years, work/education hardship considered in 6 months, general hardship in 1 year

THIRD OFFENSE

- Incarceration: Not less than 180 days (150 day mandatory), not more than 5 years State Prison (Felony status)
- May be served in a correctional facility treatment programs
- Fine \$1,000 -\$15,000
- License suspended for 8 years, work/education hardship considered in 2 years, general hardship in 4 years

FOURTH OFFENSE

- Incarceration: Not less than 2 years (1 year Minimum Mandatory), not more than 5 years (Felony status)
- Fine \$1,500 - \$25,000
- License suspended for 10 years, work/education hardship considered in 5 years, general hardship in 8 years

FIFTH OFFENSE

- Incarceration: Not less than 2 1/2 years (24 mos. Minimum Mandatory), not more than 5 years (Felony status)
- Fine \$2,000 - \$50,000
- License for life, no possibility of hardship

BREATH TEST FAILURES AND REFUSALS

Note: Operators under age 21 face additional penalties to the following under c. 90, §24P (see elsewhere in these materials)

CHEMICAL TEST FAILURES:

A breath test of .08 for operators over age 21, or .02 for operators under age 21 incurs a 90 day suspension. **Note:** This suspension terminates at 90 days or with the disposition of the case, whichever is earlier.

CHEMICAL TEST REFUSALS:

Suspensions for Chemical Test Refusals increase when the operator has had previous OUI convictions within 10 years prior to the new arrest. Contrary to popular opinion, the enhanced suspensions are not based on previous refusals.

120 days: Operator over age 21 who refuses and has no prior OUI convictions in 10 years.

180 days: Operator over age 21 who refuses and has one prior OUI conviction in 10 years, or operator under age 21 with no or one prior OUI conviction in 10 years.

1 Year: Operator who refuses and has two prior OUI convictions in 10 years.

NOTE: See additional suspensions pursuant to M.G.L. c. 90, §24P elsewhere in these materials.

UNDER 21 OUI ISSUES

The new OUI has created a separate, complex set of rules that affect drivers under 21 differently from their adult counterparts. These issues have come up more and more frequently lately. Use the following as a guideline in handling some of these issues.

NOTE: See "Junior Operator" section for additional under age 18 penalties.

CHEMICAL TEST REFUSALS

BEFORE DISPOSITION: (assuming first offense)

180 day suspension under M.G.L. c.90, §24 (1)(f)(1)

180 day suspension under M.G.L. c.90, §24P (run on/after the above suspension)

NOTE: The 2nd 180 day suspension under §24P is waivable upon ENTRY into the alcohol program. Unlike the statute for conviction, completion is not required. If they do not complete the program, we have the authority at that time to reinstitute the suspension.

AFTER DISPOSITION: (assuming first offense)

GUILTY/CWOF FINDING: The minimum sentence is 210 days, run on/after the above suspensions. The 2nd 180 day suspension is waived if the defendant enters the program. Net result is 390 days if they enter a program.

NOT GUILTY/DISMISSAL: The operator can get the first 180 days cleared if they get an order from the court. They still must serve the 2nd 180 days under §24P unless they enter a program on their own accord.

CHEMICAL TEST FAILURES

The new law calls for suspension actions even when the BAC reading is under the limit that would result in an OUI charge (which must be .06 or above). Any youth having a reading of .02 or above falls under M.G.L. c.90, §24 (1)(f)(2) and §24P **EVEN IF THEY ARE NOT CHARGED WITH OUI.**

IF THERE IS NOT AN OUI CHARGE: (assuming first offense)

180 day suspension under M.G.L. c.90, §24P

NOTE: The 180 day suspension under §24P is waivable upon ENTRY into the alcohol program. Unlike the statute for conviction, completion is not required. If they do not complete the program, we have the authority at that time to reinstitute the suspension.

IF THERE IS AN OUI CHARGE: (assuming first offense)

90 day suspension under §24 (1)(f)(2), or until the case ends in court (whichever is shorter)

180 day suspension under §24P (on/after), waivable upon entry into the program.

210 days minimum if convicted, on/after the above.

NET RESULT: A youth in this case entering the program must serve 210 days (first offense), as the 90 days ends with the case, and the 180 days ends with the program entry.

BREATH TEST

REFUSAL

HEARINGS

**SAMPLE
POLICE
SUBMISSION
FOR
BREATH TEST
REFUSAL**

Notice of Suspension for a Chemical Test Refusal

Operator: [REDACTED] Date of Birth: 08/14/1956
Address: [REDACTED] SS#: [REDACTED] Hgt: 511 Sex: M
City: E FALMOUTH State: MA
Lic Number: [REDACTED] Class: D Permit Class:
Issuing State: MA Expiration: 08/14/2002

A temporary License has been issued.

**** Notice of Suspension ****

This is your formal notice of the intent to suspend your license or right to operate under M.G.L. Ch 90, Sec 24(1)(f)(1). The suspension is for this refusal will be for a period of not less than 120 days and not more than one year. Operators under 21 years of age will incur an additional 180-day suspension under M.G.L. Ch. 90, Sec. 24P.

You must present this document at the Registry of Motor Vehicles if you request a hearing on the suspension. No hearing will be granted without this document.

The suspension will occur automatically at the end of the fifteenth (15) day after issuance of this document. No hardship licenses are authorized by the law during the period of suspension.

**** Operator's Right to a Hearing ****

MGL Ch 90. Sec. 24(1)(g) reads, in part: "Any person whose license, permit, or right to operate has been suspended under subparagraph (1) of paragraph (f) shall, within fifteen days of suspension, be entitled to a hearing before the registrar which shall be limited to the following issues: (i) did the police officer have reasonable grounds to believe that such person had been operating a motor vehicle while under the influence of intoxicating liquor upon any way or in any place to which the members of the public have a right of access or upon any way to which members of the public have a right of access as invitees or licensees, (ii) was such person placed under arrest, and (iii) did such person refuse to submit to such test or analysis."

**** Time, Date and Place of Hearing ****

You have the opportunity for such a hearing between the hours of 9:00 AM and 4:00 PM, Monday through Friday, excluding holidays, within a thirty (30) day period following the issuance of this notice. No appointments are necessary, and are held on a walk-in basis only. You must appear, with this form, and any witnesses, documents, or other evidence you wish to present, at the Registry of Motor Vehicles, 100 Nashua St., Boston. No hardship or limited licenses of any type are authorized by law during this period of suspension.

The officer below hereby certifies that they have served the operator with this notice, and has submitted an electronic notification of this transaction to the Registry of Motor Vehicles.

Officer's Name: [REDACTED]
Issuing Police Dept: REVERE PD - TRAFFIC

Date: 09/21/1998
Phone: 781-286-8336

Temporary Driver's License

Operator: [REDACTED] P Date of Birth: 08/14/1956
Address: [REDACTED] SS#: [REDACTED] Hgt: 511 Sex: M
City: E FALMOUTH State: MA

Lic Number: [REDACTED] Class: D Permit Class:
Issuing State: MA Expiration: 08/14/2002
Restrictions:
Endorsements:

Issue Date: 09/21/1998 Time of Issuance: 21:00

This temporary Driver's license is issued in lieu of a photo license under M.G.L. Ch. 90, Sec 24. It is not valid until twelve hours after the above date and time of issue. It will expire at the end of the fifteenth (15) day after the date of issuance.

Issuance of this document does not provide any driving privileges if your license or right to operate is currently suspended, revoked or expired, and does not negate any suspension, revocation of expiration that is to take effect during the period of this temporary license. No duplicates will be issued should this license be lost or misplaced.

The officer below hereby certifies that they have served the operator with this notice, and has submitted an electronic notification of this transaction to the Registry of Motor Vehicles.

Officer's Name: [REDACTED] Date: 09/21/1998
Issuing Police Dept: REVERE PD - TRAFFIC Phone: 781-286-8336

Report to Refusal to Submit to Chemical Test
Under M.G.L. Ch. 90, Sec. 24 (1)(f)(1)

Operator: [REDACTED] Date of Birth: 08/14/1956 Sex: M
Address: [REDACTED] City/Town: E FALMOUTH State: MA
S.S.#: [REDACTED] License #: [REDACTED] Issuing State: MA Expiration: 08/14/2002
Was the operator arrested on a charge of operating a motor vehicle while under the influence of intoxicating liquor upon a way or in a place to which the public has a right to access as invitees or licensees in violation of Section 24 Chapter 90 of the General Laws?
☒ Yes ☐ No
Date of Arrest: 09/21/1998 Location 23 PLEASANT ST REVERE
(Street) (City or Town)
Arresting Officer: [REDACTED] Dept. REVERE PD - TRAFFIC

State reasonable grounds as to belief that the operator committed said violation

- State operator's driving behavior and details of pursuit (if any) and apprehension (in detail):
OBSERVED DRIVER PULL UP IN FRONT OF POLICE STATION IN THE
MOTOR VEHICLE.
- State symptoms of intoxication (in detail):
UNSTEADY ON FEET SLURRED SPEECH GLASSY EYES
MODERATE ODOR OF ALCOHOL
- State other evidence of reasonable grounds (including field tests), if any:
DEF. WAS STAGGERING BACK AND FORTH, ALMOST FELL OVER.
DEF. WAS VERY DISORIENTED UNSURE IF INVOLVED IN ACCIDENT.

Is the refusal being submitted due to insufficient sample provided for testing: Y
If so, provide a detailed description of why the officer considered the refusal to be intentional:
REFUSED TEST

Was the defendant offered a chemical test? Yes
If yes, was the person advised that refusal would result in suspension of license for not less than 120 days and not more than 1 1/2 years? Yes
At: REVERE PD - TRAFFIC 09/21/1998
(Place of Refusal) (Date)

Name of officer before whom such a refusal was made: [REDACTED]
Name of other person witnessing such refusal: [REDACTED]

This is the report of refusal of [REDACTED] and was made by
[REDACTED] under the penalties of perjury. Data entry and transmission were done by
[REDACTED] by or at the direction of [REDACTED]

FORMS FILLED OUT BY THE OPERATOR AT THE HEARING

- Clearly state the law as to what may be contested
- Notify the operator in four separate instances that they must submit all pertinent evidence as any Judicial Review is limited to the record
- Gives the operator the absolute ability to submit any and all evidence into the record. The hearings officer has NO ability to control what goes into the record.

**OPERATOR'S REQUEST FOR A HEARING REGARDING A SUSPENSION FOR A
CHEMICAL TEST REFUSAL UNDER M.G.L. c.90, §24(1)(g)**

NAME: _____ Date of Birth: _____
Address: _____ City/State: _____
Driver's License #: _____ Issuing State: _____

READ THE FOLLOWING NOTICES CAREFULLY AND COMPLETELY:

1. This hearing regarding a suspension due to a breathalyzer refusal is pursuant to M.G.L. c.90, §(1)(g). The procedures for this hearing are as outlined in 540 C.M.R. 9.00 (Code of Massachusetts Regulations).
2. M.G.L. c.90, §(1)(g) allows me to challenge this suspension on the following grounds:
 - (i) did the police officer have reasonable grounds to believe that said person had been operating a motor vehicle while under the influence of intoxicating liquor upon any way or in any place to which the members of the public have a right of access as invitees or licensees
 - (ii) was such person placed under arrest, and
 - (iii) did such person refuse to submit to such test or analysis
3. You have the right to introduce any testimony, documents, or other evidence on your behalf on the forms supplied, and all such evidence will become part of the record of this hearing. You will not be allowed to submit additional evidence at a later date.
4. Any testimony you wish to be made a part of the record of this hearing is to be written on the attached form. Failure to do so on your part will result in the evidence not being included in the record of the hearing.
5. You have a right to petition the district court to review the decision of the Registrar by filing a "Petition for Judicial Review" in the court where you are charged.
6. The Judicial Review of the hearing is an administrative review, limited to a review of the record compiled at the Registry Hearing. No other evidence will be heard at the court. M.G.L. c.90, §(1)(g) reads, in part: "Review by the court shall be on the record established at the hearing before the registrar."
7. Any testimony, documents or other evidence that I may wish the court to review must be presented at this hearing.

I have read the above notices regarding my hearing. Based on that, I am requesting a hearing on my Breathalyzer Refusal suspension.

SIGNED: _____ DATE: _____

Statement of the Defendant/Witness

The following statement shall become a part of the record of this hearing, pursuant to M.G.L. Ch. 90, Sec. 24 (1) (g):

1. Fill out a separate form for each witness.
2. If you are appearing with an attorney, your attorney should fill out a form detailing each legal or technical argument that they will present at the hearing.

Name (Please Print): _____

Address: _____

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

Signed: _____ Date: _____

FORMS FILLED OUT BY THE HEARINGS OFFICER

- Clearly deal with each statutory issue
- Indicate when a court appeal is received, and when it is sent to the court
- Operator is given in-hand a copy of their statutory right to a Petition for Judicial Review, plus they receive the only paperwork needed to expedite their appeal



Chemical Test Refusal Hearing Report
Under M.G.L. Ch. 90, Sec. 24 (1)(g) and 540 CMR 9.00

Operator: _____ Hearing Date: _____

License Number: _____ State (if not Mass): _____

Issues as detailed under M.G.L. Ch. 90, Sec. 24 (1) (g):

1. Did the police have reasonable grounds to believe that the defendant was operating a motor vehicle under the influence of intoxicating liquor upon any way or in any place to which members of the public have a right of access or upon any way to which members of the public have a right of access as invitees or licensees?

2. Was the defendant placed under arrest? _____

3. Did the defendant refuse to submit to a Chemical Test? _____

Hearing Officer's Decision: _____

For Official Registry Use Only

Hearing Officer: _____ SU# _____

Signed: _____

Date Court Request for Appeal was received _____

Date sent to Court _____ Sent by: ☐ Fax ☐ Mail

Person Sending (Print): _____

Operator's Right of Appeal From a
Registry of Motor Vehicles Chemical Test Refusal Hearing

M.G.L. c.90, §24 (1)(g) reads, in part:

“Within thirty days of the issuance of the final determination by the registrar following a hearing under this paragraph, a person aggrieved by the determination shall have the right to file a petition in the district court for the judicial district in which the offense occurred for judicial review. The filing of a petition for judicial review shall not stay the revocation or suspension. The filing of a petition for judicial review shall be had as soon as possible following the submission of said request, but not later than thirty days following submission thereof. Review by the court shall be on the record established at the hearing before the registrar. If the court finds that the department exceeded its constitutional or statutory authority, made and erroneous interpretation of law, acted in an arbitrary or capricious manner, or made a determination which is unsupported by the evidence in the record, the court may reverse the registrar's determination.”

NOTE TO OPERATOR: If you desire such a review, the petition must be filed in the District Court where your Operation Under the Influence case that this suspension arose out of is pending.

**OPERATOR'S PETITION FOR COURT REVIEW
OF REGISTRY ACTION ON LICENSE SUSPENSION
FOR CHEMICAL TEST REFUSAL**

(To be filed at the appropriate District Court)

**CIVIL DOCKET NO.
FOR COURT USE ONLY**

**Trial Court of
Massachusetts**



Name of Operator:

Date of Birth:

Lic. #

State Issuing License:

S.S.#:

Date of Arrest:

Police Dept.:

Today's Date:

RMV Hearing Date:

Date of RMV Decision:

I request court review under G.L. c. 90, s. 24(1)(g) of the decision by the Registry of Motor Vehicles in support of the suspension of my license, permit or right to operate a motor vehicle based on my alleged refusal to submit to a chemical test or analysis of my breath or blood at the time of my arrest for operating a motor vehicle while under the influence of intoxicating liquor. G.L. c. 90, s. 24(1)(f)(1).

Signature of Operator: _____

FOR CLERK'S USE ONLY

This proceeding is civil in nature and is not part of the underlying criminal drunk driving case.

1. Court: _____ . 2. A filing fee of \$110 is required for this petition. G.L. c. 262, ss. 2, 4C.
3. Court Address: _____
4. After completing lines 5 to 9 below, a photo copy of this form must be faxed immediately to the Registry of Motor Vehicles Suspension Department @ **617-351-9003**. This will allow the Registry to forward a copy of the Registry hearing record to the court in time for the hearing on this petition. Questions may be directed to (617) 351-9236 or 351-9947.
5. The court hearing on this petition will be held on _____ at _____
(The hearing must be held "as soon as possible" and no later than 30 days after submission of the petition. G.L. c. 90 s. 24(1)(g)
(The Registry of Motor Vehicles requests at least 10 days advance notice.)
6. Court telephone no.: _____ . 7. A copy of this Petition faxed to RMV on _____.
8. Court FAX no.: _____.
9. Name of court staff person processing this application. (Please print.) _____ Ext. No. _____

DECISION OF THE COURT
(To be completed after court hearing)

This hearing must be limited to the Registry record. G.L. c. 90, s. 24(1)(g).

After review of the hearing record of the Registry of Motor Vehicles in this case, I find as follows:

YES NO

- | | | |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | The petition was timely filed (i.e. within 30 days after the issuance of the final determination of the Registry following their hearing. G.L. c.90, s.24(1)(g)). |
| <input type="checkbox"/> | <input type="checkbox"/> | The Department exceeded its constitutional or statutory authority. If yes, <i>specific findings</i> : _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | The Department made an erroneous interpretation of the law. If yes, <i>specific findings</i> : _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | The Department acted in an arbitrary and capricious manner. If yes, <i>specific findings</i> : _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | The Department made a determination which is unsupported by the evidence in the record. If yes, <i>specific findings</i> : _____ |

Accordingly, based on the above indicated findings, I hereby ☐ AFFIRM ☐ REVERSE the Registrar's determination.

Signed: _____ Judge Name (Print) _____ Date _____

NOTE TO CLERK-MAGISTRATE: Please FAX Hearing result to RMV *immediately* at (617) 351-9003. Thank you.

**HARDSHIP
LICENSE
REQUIREMENTS**

OUI HARDSHIP APPROVAL REQUEST

- ____ There is **NO** evidence of any operation since the effective date of this revocation
- ____ The **MINIMUM** amount of time has been served for hardship consideration
- ____ All other active revocation periods have been **COMPLETED**
- ____ The operator has provided documented proof of completion of the **proper** alcohol treatment program {2 week program for 2nd offense, 90 days for 3rd and 4th offenses}
- ____ The operator has provided the Discharge Summary from the treatment program
- ____ The operator has completed all ordered after-care
{NOTE: 2nd offenders must have completed at least 26 weeks of aftercare, and be up to date on the remainder of the 2 year aftercare}
- ____ The operator has provided documented proof of compliance with Court Probation
NOTE: NO reinstatements are to be approved without this documentation.
- ____ The operator has documented a legitimate hardship for employment or education
- ____ The operator's Board of Probation record was checked, and his driving record updated

THE HEARINGS OFFICER BELOW HAS FOUND EACH OF THE ABOVE TO BE IN THE AFFIRMATIVE, AND SUBMITS FOR SUPERVISOR APPROVAL

STAMP:

HOURS: _____

SUPERVISOR APPROVAL **{Required on ALL 3rd and 4th offenses}**

THE ABOVE REQUEST IS: ____ Approved ____ Denied

Signed: _____
Comments:

Date: _____

94C DRUG OFFENSE HARDSHIP APPROVAL

- _____ There is **NO** evidence of any operation since the effective date of this revocation
- _____ The **MINIMUM** amount of time (50%) of the revocation has been served for hardship consideration
- _____ All other active revocation periods have been COMPLETED
- _____ The operator has provided documented proof of completion of the proper drug treatment program
- _____ The operator has documented proof of three (3) clean urine screens, one for each of the three (3) months preceeding this request
- _____ The operator has provided documented proof of compliance with Court Probation
- _____ The operator has documented a legitimate hardship
- _____ The operator has had no other 94C offenses, either prior or subsequent
- _____ The operator's Board of Probation record was checked, and his driving record updated

THE HEARINGS OFFICER BELOW HAS FOUND EACH OF THE ABOVE TO BE IN THE AFFIRMATIVE, AND APPROVES THIS HARDSHIP APPLICATION

STAMP:

Hours: _____

HTO HARDSHIP APPROVAL

_____ There is **NO** evidence of any operation since the effective date of this revocation.

_____ The **MINIMUM** amount of time (one year) of the revocation has been served for hardship consideration.

_____ All other active revocation periods have been **COMPLETED***

***Exception:** When there are multiple HTO revocations, but there are no new incidents occurring after the first HTO suspension date (using date of incident). One year must be served from the effective date of the most recent HTO in all cases. Note that the second or subsequent HTO remains in effect for the full four year period.

_____ The operator has completed the National Safety Council Driver Retraining Course within three years of this request.

_____ The operator has documented a legitimate hardship.

_____ The operator's Board of Probation record was checked, and his driving record updated.

THE HEARINGS OFFICER BELOW HAS FOUND EACH OF THE ABOVE TO BE IN THE AFFIRMATIVE, AND APPROVES THIS HARDSHIP APPLICATION

STAMP:

HOURS: _____

Appendix

Effects of a Not Guilty/Dismissal/Nolle Pros in OUI Cases on Chemical Test Refusals and Failures

1. When the operator is under a 90 suspension for failing a breath test:

The Not Guilty or Dismissal (incl. Nolle Pros) will terminate the 90 day suspension as soon as the RMV has notice of the court finding.

2. When the operator is under a 120 day (or more) suspension for refusing the test:

The finding does NOT automatically terminate the suspension. Attached is a copy of the law, and the correct procedures for the defendant to early reinstatement.

3. When the operator is under age 21:

The principles in #1 and #2 above apply, with one critical difference. Operators under age 21 incur an ADDITIONAL 180 day suspension for failing or refusing a test under §24P. That suspension does NOT terminate with the disposition, nor does it get reinstated along with an early reinstatement of a refusal suspension. §24P is specifically in the law to see that defendants under age 21 enter and complete an alcohol program REGARDLESS of the finding.

Section 24P reads, in part:

"...upon evidence that said person refused to submit to a chemical test or analysis of his breath or blood... notwithstanding the finding upon any such charges, shall have his license or permit to operate suspended for a period of one hundred and eighty days. Such suspension... shall be in addition to any penalty imposed upon such person by the court..." (Emphasis added)

Section 24P also reads, in part:

"...such person shall, if he consents, be assigned to a program... Upon entry into such program...the suspension of license or permit to operate as required by this section shall be waived by the registrar."

The two sections above make it clear that 24P suspensions survive the court process, regardless of whether or not a refusal suspension has been reinstated pursuant to #2 above. In fact, the second section quoted above states that the 24P suspension is waived upon entry into the program. Since virtually all first offenders are offered the program, it appears that 24P is largely geared for those who are found not guilty or receive a dismissal, and as a result not placed in the program due to a conviction or CWOFF. The section appears to represent an intention by the legislature to see that every youth involved in a drinking and driving incident receive counseling even when there is insufficient evidence to convict.

PROCEDURE TO REINSTATE A CHEMICAL TEST REFUSAL AFTER A DISMISSAL OR NOT GUILTY FINDING

Pursuant to M.G.L. c. 90, §24 (1)(f)(1), the dismissal, nolle pros, or not guilty result on the underlying drunk driving charge will NOT automatically reinstate the suspension for a Chemical Test Refusal. The defendant must file a motion before the judge that heard the case requesting restoration of the suspension. The procedures are as follows:

1. File the motion in the Criminal Clerk's office (they have blank motion forms that can be filled out if needed).
2. Have the motion set for a hearing when the Judge that heard the case will be available.
3. Give the District Attorney's Office notice of the hearing with a copy of the motion.
4. If the motion is allowed, present the allowed motion, certified by the clerk, at the Driver Control Hearings office at 100 Nashua Street, Boston, MA 2nd Floor.

M.G.L. c. 90, §24 (1)(f)(1), states in part:

The license suspension shall become effective fifteen days after the offender has received the notice of intent to suspend from the police officer. No license shall be restored under any circumstances and no restricted or hardship permits shall be issued during the suspension period imposed by this paragraph; provided, however, that the defendant may immediately, upon the entry of a not guilty finding or dismissal of all charges under this section, section twenty-four G or twenty-four L, and in the absence of any other alcohol related charges pending against said defendant, apply for and be immediately granted a hearing before the court which took final action on the charges for the purpose of requesting the restoration of said license. At said hearing, there shall be a rebuttable presumption that said license be restored, unless the commonwealth shall establish, by a fair preponderance of the evidence, that restoration of said license would likely endanger the public safety. In all such instances, the court shall issue written findings of fact with its decision.

Issues Regarding "Second Chance" 24D Dispos

The new provision (eff. 5/27/94) of 24D that allows for a second 24D to be issued when the first offense was more than 6 but less than 10 years prior to the current offense is one of the most frequently misread statutes when it comes to license loss. The section allows for the court to issue a second 24D, but unlike the first 24D it does NOT leave the license loss in the court's control. Rather, the section refers to M.G.L. C. 90, §24(1)(c)(2), which mandates that the registrar not restore the license for two years. M.G.L. c.90, §24D reads, in part:

"Any person convicted of or charged with operating a motor vehicle while under the influence of intoxicating liquor, who has been convicted or assigned to an alcohol or controlled substance education, treatment or rehabilitation program because of a like single like offense by a court of the commonwealth or any other jurisdiction more than six years, but less than ten years preceding the date of the commission of the offense with which he is charged may, upon a written finding of fact which shall be made part of the record, that appropriate and adequate treatment is available to such person and the person would benefit from such treatment and the safety of the public would not be endangered, with the person's consent, be placed on probation of not more than two years and shall, as a condition of probation, be assigned to a driver alcohol education program as provided herein, and if deemed necessary by the court, to an alcohol treatment or education program or both, and the person's drivers license or right to operate shall be suspended for a period consistent with the provisions of subparagraph (2) of paragraph (c) of subdivision (1) of section twenty-four."
(Emphasis added)

§24 (1)(c)(2) reads, in part:

"...the registrar shall not restore the license or reinstate the right to operate of such person...until two years after the date of conviction." (Emphasis added)

Note that the fact that the 24D may be continued without a finding does not affect the two year mandated revocation. The language in 24D does not require that the suspension be pursuant to §24 (1)(c)(2) {which would require the suspension to follow the date of conviction}, rather it merely requires that the suspension be consistent with that section.

COMMONWEALTH OF MASSACHUSETTS
REGISTRY OF MOTOR VEHICLES
P.O. Box 199100, Boston, MA 02119-9100

MEMORANDUM

DATE: November 24, 1997
TO: Interested Parties
FROM: Mary E. Corbett
General Counsel
SUBJECT: M.G.L. c. 90, §24E

=====

It is the opinion of the Registry of Motor Vehicles that continuing an OUI case without a finding under any section other than M.G.L. c.90, §24D is an improper disposition, and inconsistent with the applicable provisions of the OUI statute, M.G.L. c. 90, §24. Contrary to the practice in a minority of jurisdictions, it is the Registry's position that a continuance without a finding is not a permissible disposition under either §24 or, more significantly, §24E. An analysis of the relationship among the applicable statutory provisions reveals that, rather than providing an independent basis for a CWOFF disposition, §24E is intended to allow courts to review cases that have already been disposed of pursuant to §24D.

M.G.L. c.90, §24 specifically bars any OUI from being Continued Without a Finding except for those under §24D

The wording of M.G.L. c.90, 24 (7th par.) is explicit in defining the restrictions on a CWOFF disposition in the context of OUI cases:

*"A prosecution commenced under the provisions of this subparagraph **shall not** be placed on file or continued without a finding except for dispositions under section twenty-four D. (emphasis added).*

Because all OUI prosecutions are commenced under subparagraph one of c. 90, §24, the limitation on CWOFF dispositions is of universal application. M.G.L. c. 278, §18 confers upon District Court Judges the authority to place cases on file except where "prohibited by law," such as is the case in c.90, §24.

Since it is clear that §24E cannot be used as a basis for an initial CWO of disposition, what is the purpose of that section?

M.G.L. c.90, §24E allows a court to review a case AFTER a §24D disposition has been entered.

The intent of §24E is to allow courts to go back and look at §24D dispositions that have previously been entered. This section allows defendants who have completed the §24D requirements early to terminate their case before the full period of the continuance has run. Section 24E reads, in part:

"The provisions of this section shall apply to any person convicted of or charged with operating a motor vehicle while under the influence of intoxicating liquor provided said person is qualified for a disposition under section twenty-four D...In order to qualify for a disposition under this section such person shall, in the judgment of the court, have cooperated fully with the investigation as described in section twenty-four D and shall be and have been in full compliance with such order as the court may have made for a one year term of probation as provided therein, including participation in such driver alcohol education programs, alcohol treatment or alcohol treatment and rehabilitation programs as the court may have ordered."(emphasis added).

The wording of §24E clearly shows that in order for it to apply, the defendant must first have been in compliance with the orders of the court, including participating in alcohol programs. The fact that the defendant must already be in compliance with court orders directly contradicts a reading that §24E can be an initial disposition since, in such a scenario, there would be no pre-existing orders with which the defendant could comply. Moreover, that the pre-existing orders referred to in §24E are those issued as part of a §24D disposition is made clear by the direct reference to §24D through the use of the word "therein."

The fourth paragraph of §24E states, in even more specific terms, the requirement that there be an initial disposition:

"Where a person has been charged with operating a motor vehicle under the influence of intoxicating liquor, and where the case has been continued without a finding a finding...and where such person is qualified for a disposition under this section, a hearing shall be held by the court at any time after sixty days but not later than ninety days from the date where the case has been continued without a finding to review such person's compliance with the program ordered as a condition of probation and to determine whether dismissal of the charge is warranted. (emphasis added).

While the above section reflects the legislative intent to allow a court to terminate a 24D early in favor of a defendant, the section also can be used against a defendant who has not complied with §24D. Referring back to §24D, it reads, in pertinent part:

"Failure to pay the fees required under this section shall, unless excused, constitute sufficient basis for finding by the court at a hearing held pursuant to section twenty-four E that the person has failed to satisfactorily comply with the program." (emphasis added) .

In this regard, §24E then states:

"If at such hearing the court determines that said person has failed to satisfactorily comply with such program...the court may notify the registrar and the registrar shall without hearing revoke said person's license or right to operate...for the remainder of the period from the date of conviction provided in subparagraph (1) of paragraph (c) of subdivision (1) of section twenty-four."

This provision of §24E allows the court to order the Registrar to institute the 1 year revocation for those having §24D dispositions revoked.

How did the view that cases can be Continued Without a Finding under §24E arise?

The Registry is aware of a number of theories regarding the source of the view that §24E can be the basis for an initial CWOFF disposition, however two are most frequently mentioned. The first relates to the reference to a "conviction" in §24D:

"Any person convicted of or charged with operating a motor vehicle while under the influence of intoxicating liquor..."

The word conviction has caused some people to conclude that §24D is only applicable to convictions. This construction, however, ignores the second part of the sentence which says "or charged with," clearly allowing §24D to be used in the absence of a conviction. Notably, §24E begins with the same language.

The second argument asserted by proponents of §24E dispositions involves the third paragraph of that section:

"Nothing in this section shall be construed to prevent the exercise by the court of its authority under law to make any other disposition of a case of operating under the influence of intoxicating liquor." (emphasis added)

Upon careful reading, however, it is clear that this paragraph cannot properly be viewed as creating an independent right to use §24E to continue cases without a finding. The proviso that nothing in this section (§24E) prevents any other disposition does not relax the prohibition against CWOFF dispositions other than under §24D, since that bar is contained in the primary OUI statute, §24.(see discussion above).

In conclusion, it is the Registry's position that the continuance without a finding of any OUI case must occur pursuant to the provisions of M.G.L. c. 90, §24D, and that such cases may be reconsidered by the court for early termination under §24E under appropriate circumstances. This interpretation of a consecutive relationship between §24D and §24E is supported not only by the wording of the sections themselves, but by the basic rules of statutory construction. "*Where two or more statutes relate to the same subject matter, they should be construed together so as to constitute an harmonious whole consistent with the legislative purpose.*" Registry of Motor Vehicles v. Board of Appeal on Motor Vehicle Liability Policies and Bonds, 382 Mass. 580 (1981).

IMMEDIATE THREAT REVOCATIONS

Pursuant to M.G.L. c. 90, §22(a), the Registrar may revoke without hearing when he believes that an operator poses an immediate threat to the public. The operator will generally be given advance notice before the suspension, except in extreme cases. To request such action be taken, an officer must fill out the form on the next page, and submit it to the Registry.

When Immediate Threat Action is Appropriate:

- Serious cases such as M.V. Homicide
- Cases where a medical condition that inhibits driving exists
- Extreme cases of disregard for public safety
{High speed chases, for example}

When Immediate Threat Action is Not Appropriate:

- When there are proper charges pending in court, and the driver poses no continuing threat (such as an ordinary operating to endanger case)
- When the person is not being charged due to a technicality, the Immediate Threat should not be used as a substitute (example: OUI where the state cannot prove operation)



The Commonwealth of Massachusetts

Registry of Motor Vehicles

1135 Tremont Street, Boston 02120

Request for Immediate Threat License Suspension / Revocation

Please Mail Immediately or FAX to (617) 351-9219

TO: The Registry of Motor Vehicles
1135 Tremont Street

Boston, MA 02120

Attn: Suspensions Department / Immediate Threats

Date of Request: _____

Date of Incident: _____

Operator: _____ Lic #: _____ DOB: _____

Address: _____ City / State: _____

Incident Location: _____ City / State: _____

We believe that the above licensed operator has committed a violation of the motor vehicle laws of nature that would give you reason to believe that his/her continued operation will be so seriously improper as to constitute him/her an immediate threat to the public safety.

The following incident(s), event(s), or circumstance(s) have led us to this belief. (Include a summary of facts even if additional information is attached).

After reviewing the above facts we would ask you to take whatever action you deem appropriate.

Signed under the penalties of perjury this _____ Day of _____, _____.

Signature of Police Chief or Authorized Person

Signature/Title of Police Officer filing the request

Department (please print): _____

Officer's Name: _____

(Please attach copies of all documentation to support this request).

Form # 20385

Form Date 10/01/94

GRIEF & LOSS R/T MVH

VICARIOUS TRAUMATIZATION

CROSS-CULTURAL CONSIDERATIONS

Materials prepared by Dana W Moran, Program Coordinator
Project Reach/Center for Health & Human services
New Bedford, MA

GRIEF AND LOSS

WHAT GRIEF IS

A *total* response to a loss: physical, emotional, spiritual

A painful *healing* process

It occurs *slowly* over a period of time, with a timetable all its own

WHAT GRIEF IS NOT

A disease

Unhealthy

Unnatural

Avoidable

SIGNS OF GRIEF

change in appetite

headaches

tightness of chest, throat, stomach

change in sleep

always feeling tired

restlessness

difficulty concentrating

inability to complete tasks

forgetfulness

mood swings

anger, guilt, sadness

crying for no reason

change in sexual interest

disturbing dreams

physical illness

4 TASKS OF GRIEVING (T-E-A-R)

* TO ACCEPT THE REALITY OF THE LOSS

Significant loss inevitably involves some level of *denial*. It may be helpful to think of denial as a kind of emotional circuit breaker which won't allow our coping mechanisms to become overwhelmed, rather than as an unhealthy avoidance response. The first task is to work toward accepting the facts of this loss, to acknowledge what this loss means, and to recognize that it is irreversible.

* EXPERIENCE THE PAIN

Grief involves both physical and emotional pain -sometimes unbelievable levels of it. As the initial numbness wears off, and the pain sets in, most of us would prefer to do an end run around it. However, the only way to true recovery is through the pain, following our own personal rhythm of work and rest. When we do try the avoidance techniques, we sooner or later discover that the pain is still present for us to "do" when we're willing to confront it.

* ADJUST TO AN ENVIRONMENT WITHOUT THE DECEASED

I must redefine myself, my roles, and my functions in a world without the person(s) I loved. What will I miss most? What won't I miss?

* RELOCATE THE DECEASED AND RE-INVEST IN LIFE

I need to find a suitable place in my emotional life for the person who has died -a place that enables me to go on living effectively. I will never be the same person, for I am changed. My loved one is not somehow replaced by another person or activity.

Normal Reactions to Abnormal Events: Post Traumatic Stress Symptoms

- Sense of helplessness/powerlessness
- Intrusive recollections of the event
- Feeling vulnerable/fearful
- Inability to concentrate
- Memory loss
- Guilt (real or imagined: the "if only's")
- Intense anger/rage
- Isolation
- Fearful of losing impulse control
- Depression
- Startle easily
- Sense of going crazy
- Physical complaints/symptoms
- Disturbed sleep/eating patterns
- Increased use of alcohol/drugs or high risk activity (self-medicating)
- Significant shifts in lifestyle/values

Dispelling 5 COMMON MYTHS About Grief



by Alan D. Wolfelt
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Many people have a real desire to learn more about the experience of death and grief. Without a doubt we have witnessed an upsurge in interest in bereavement caregiving. However, many well-intentioned, yet misinformed people are still victims of some widely held myths regarding grief.

The purpose of this article is to identify, describe, and dispel five common myths about grief.

Providing quality care to the bereaved requires that we as a society work to dispel these myths outlined below. People who have internalized these myths become incapable of helping griever's move toward healing.

These myths are not intended to be all-inclusive or mutually exclusive. Observation suggests that many people who believe in any one of these will also believe in many, if not all, of the others. Our joint task is not to condemn these people, but supportively encourage them to broaden their understanding of the complex experiences of grief and mourning.

Identifying The Myths

Myth #1: *Grief and mourning are the same experience;*

Myth #2: *There is a predictable and orderly stage-like progression to the experience of mourning;*

Myth #3: *It is best to move away from grief instead of toward it;*

Myth #4: *Following the death of someone significant to you, the goal is to "get over" your grief;*

Myth #5: *Tears expressing grief are only a sign of weakness.*

Describing and Dispelling The Myths

Myth #1: *Grief and mourning are the same experience.*

The majority of people tend to use the words grief and mourning synonymously. However, there is an important distinction between them. We have learned that people move toward healing not by just grieving, but through mourning.

If we want to help the bereaved we can work to understand the semantic distinctions of these commonly used terms. Simply stated, grief is the thoughts and feelings that are experienced within oneself upon the death of someone loved. In other words, grief is the internal meaning given to the experience of bereavement.

Mourning is taking the internal experience of grief and expressing it outside of oneself. The specific ways in which people express mourning are influenced by customs of their culture. Another way of defining mourning is to state that it is "grief gone public" or "sharing one's grief outside of oneself."

In reality, many people in our culture grieve, but they do not mourn. As opposed to being encouraged to express their grief outwardly they are often greeted with messages along the lines of "carry on," "keep your chin up," and "keep busy." So, they end up

grieving within themselves in isolation, instead of mourning outside of themselves in the presence of loving companions.

Now that these terms have been defined in a more formal sense, let's take a moment to acknowledge that grief and mourning are much more personal experiences than their words describe. Actually, this author finds words inadequate to convey what grief and mourning are all about.

Grief and mourning are much more than words. Experiencing the thoughts and feelings of grief is often movement through an unknown territory that is embraced by an overwhelming sense of pain and loss. Only through encouraging ourselves and others to mourn outside of ourselves will we become a catalyst for healing.

Don't just grieve, mourn, too, and be proud of your capacity to do so!

Myth #2: *There is a predictable and orderly stage-like progression to the experience of mourning.*

Stage-like thinking about both dying and mourning has been appealing to many people. Somehow the "stages of grief" have helped people try to make sense out of an experience that isn't as orderly and predictable as we would like it to be. Attempts have been made to replace fear and lack of understanding with the security

that everyone grieves by going through the same stages. If only it were so simple!

The concept of "stages" was popularized in 1969 with the publication of Elizabeth Kubler-Ross' landmark text *On Death and Dying*¹. Kubler-Ross never intended for people to literally interpret her five "stages of dying." However, many people have done just that and the consequences have often been disastrous.

One such consequence is when people around the grieving person adopt a rigid system of beliefs about grief that do not allow for the natural unfolding of the mourner's personal experience. We have come to understand that each person's grief is uniquely his or her own. As helpers we only get ourselves in trouble when we try to prescribe what someone's grief experience should be.

Just as different people die in different ways, people mourn in different ways. Expecting anything less would be to demonstrate a lack of respect for the uniqueness of the person. This author prefers a helping attitude that conveys the following: "Teach me about your grief and I will be with you. As you teach me I will follow the lead you provide me and attempt to be a stabilizing and empathetic presence."

To think that one's goal as a caregiver is to move people through



the stages of grief would be a misuse of counsel. A variety of unique thoughts and feelings will be experienced as part of the healing process. For example, disorganization, fear, guilt, and anger may or may not occur. Often, regression occurs along the way and invariably some overlapping. Sometimes emotions follow each other within a short period of time; at other times, two or more emotions are present in the grieving person simultaneously.

Do not prescribe how someone should grieve, but allow them to teach you where they are in the process.

Myth #3: It is best to move away from grief instead of toward it.

The unfortunate reality is that many griever's do not give themselves permission or receive permission from others to mourn, to express their many thoughts and feelings. We continue to live in a society that often encourages people to prematurely move away from their grief instead of toward it. The result is that many people either grieve in isolation or attempt to run away from their grief through various means.²

During ancient times, stoic philosophers encouraged their followers not to mourn, believing that self-control was the appropriate response to sorrow. Still today, well intentioned but uninformed people

carry on this long-held tradition. A vital task of the helper is to encourage and support the movement toward an outward expression of grief.

One of the reasons for many people's preoccupation with the very question "how long does grief last?" often relates to society's impatience with grief and the desire to move people away from the experience of mourning. Shortly after the funeral (if a funeral is held) the grieving person is expected to "be back to normal."

Persons who continue to express their grief outwardly are often viewed as "weak," "crazy" or "self-pitying." The common message is "shape up and get on with your life." The reality is that many people view grief as something to be overcome rather than experienced.

The result of these kinds of messages is to encourage the repression of the griever's thoughts and feelings. Refusing to allow tears, suffering in silence, and "being strong" are thought to be admirable behaviors. Many people in grief have internalized society's message that mourning should be done quietly, quickly, and efficiently.

Returning to the routine of work shortly after the death of someone loved, the bereaved person relates, "I'm fine," in essence saying "I'm not mourning." Friends, family, and co-workers often encourage this stance and refrain from talking about the death. The bereaved person having an apparent absence of mourning (having moved away from their grief instead of toward it) tends to be more socially accepted by those around him or her.

However, this type of collaborative pretense surrounding grief does not meet the emotional

needs of the bereaved person. Instead, the survivor is likely to feel further isolated in the experience of grief, with the eventual onset of the "going crazy syndrome." Attempting to mask or move away from the grief results in internal anxiety and confusion. With little, if any, social recognition related to the pain of the grief, the person often begins to think their thoughts and feelings are abnormal. As a matter of fact, the most frequent initial comment of grieving persons at our Center for Loss and Life Transition in Colorado is the statement, "I think I'm going crazy."

Our society encourages people to prematurely move away from their grief instead of toward it. If we want to help bereaved people we must remember that it is through the process of moving toward pain that we move toward eventual healing.

Myth #4: Following the death of someone significant to you, the goal is to "get over" your grief.

We have all had the unfortunate experience of hearing people inquire of the bereaved person, "Are you over it yet?" Or, even worse yet, we hear people comment, "Well, they should be over it by now." To think that we as human beings "get over" our grief is ludicrous!

The final dimension of grief in a number of proposed models is often referred to as resolution, recovery, reestablishment, or reorganization. This dimension often suggests a total return to "normalcy" and yet in my personal, as well as professional experience, everyone is changed by the experience of grief.

For the mourner to assume that life will be exactly as it was prior to the death is unrealistic and potentially damaging. Recovery

as understood by some persons. mourners and caregivers alike, is all too often seen erroneously as an absolute, a perfect state of reestablishment.

Reconciliation³ is a term this author believes to be more expressive of what occurs as the person works to integrate the new reality of moving forward in life without the physical presence of the person who has died. What occurs is a renewed sense of energy and confidence, an ability to fully acknowledge the reality of the death, and the capacity to become reinvolved with the activities of living. Also, an acknowledgement occurs that pain and grief are difficult yet necessary parts of life and living.

As the experience of reconciliation unfolds, the mourner recognizes that life will be different without the presence of the significant person who has died. A realization occurs that reconciliation is a process, not an event. Beyond an intellectual working through is an emotional working through. What has been understood at the "head" level is now understood at the "heart" level—the person who was loved is dead.

The pain changes from being ever-present, sharp, and stinging to an acknowledged feeling of loss that has given rise to renewed meaning and purpose. The sense of loss does not completely disappear yet softens and the intense pangs of grief become less frequent. Hope for a continued life emerges as the griever is able to make commitments to the future, realizing that the dead person will never be forgotten, yet knowing that one's own life can and will move forward.

We never "get over" our grief but

instead become reconciled to it. Those people who think the goal is to "resolve" grief become destructive to the healing process.

Myth #5: Tears expressing grief are only a sign of weakness.

Unfortunately, many people associate tears of grief with personal inadequacy and weakness. Crying on the part of the mourner often generates feelings of helplessness in friends, family, and caregivers.

Out of a wish to protect the mourner from pain, those people surrounding the mourner may serve to inhibit the experience of tears. Comments similar to, "tears won't bring him back" and "he wouldn't want you to cry" discourage the expression of tears. Yet crying is nature's way of releasing internal tension in the body and allows the mourner to communicate a need to be comforted.

Another function of crying is postulated in the context of attachment theory⁴ wherein tears are intended to bring about reunion with the lost person. While the reunion cannot occur, crying is thought to be biologically based and a normal way of attempting to reconnect with the person who has died. The frequency and intensity of crying eventually wanes as the hoped-for reunion does not occur.

While research in this area is still limited, some investigators have suggested that suppressing tears may increase susceptibility to stress-related disorders. This would seem to make sense in that crying is an exocrine process, one of the excretory processes. In reviewing other excretory processes, such as sweating and exhaling, the fact is that they all involve the removal of waste product from the body. Crying may serve a similar function.

In this author's clinical experience with thousands of people in grief, changes in physical expression have been observed following the expression of tears. While this is purely a subjective observation, seemingly not only do people feel better after crying, they also look better. Expressions of tension and agitation seem to flow of their body. The capacity to express tears appears to allow for a genuine healing.

The expression of tears are not a sign of weakness. The capacity of the mourner to share tears is an indication of the willingness to do the "work of mourning."

Final Thoughts

Again, be aware that the above myths are not intended to be all-inclusive. This author suggests the reader develop a list of any additional "grief myths" observed in our society.

Being surrounded by people who believe in these myths invariably results in a heightened sense of isolation and aloneness in the grieving person. The inability to be supported in the "work of mourning" destroys much of the capacity to enjoy life, living, and loving.

Only when we as a society are able to dispel these myths will grieving people experience the healing they deserve!

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MADD

AFTER THE CRASH

What's Happening Now?

Feelings

Shock and *confusion* are the initial reactions most likely experienced by your friend or loved one who has just been told that a family member has been seriously injured killed in a highway crash.

Behaviors

Sometimes, family members feel numb and give the appearance of being in control. Others may begin to display intense anger, anxiety, fear or sadness. In any case, most loved ones called suddenly to hospitals or trauma centers are incapable of rational thinking at this time, so you may need to assist them with basic planning and problem-solving.

How you can help?

- Let the family know that whatever they are feeling is acceptable. Crying with them or touching or holding them is as important as anything you can say.
- Ask if they want certain people called to be with them now (relatives, friends, clergy). If so, make the calls.
- Arrange for child care of any children left at home.
- Ask the officer who investigated the crash how the family can obtain a copy of the crash report.
- Ask the family if they would like you to notify its insurance company.

If death occurs

- Support any family members who wish to spend time with their loved one's body.
- Ask the emergency room supervisor, social worker, or chaplain where the body will be taken for autopsy and when it will be ready for release to a funeral home.
- Ask how the family can obtain a copy of the autopsy report.
- Encourage the family to allow themselves at least 24 hours before making funeral decisions. These decisions are important and should be considered by all those closest to the victim, including children.
- If a funeral home has not been pre-selected, ask the family if they would like for you to call several funeral homes to compare costs and services.

A few don't's

Families in which someone has been killed need to be joined in their grief-not talked out of it. Therefore, avoid phrases such as:

- *I know how you feel*
- *You shouldn't feel that way*
- *It was God's will*
- *You have to be strong*
- *He/she led a good, full life*
- *At least he/she didn't have to suffer growing up.*
- *You're young.*
- *You'll find someone else*
- *You're fortunate to have other children*

"I'm so sorry" accompanied by touching conveys your compassion and willingness to share the pain ... it is enough for now.

For later consideration

- Encourage additional witnesses not previously interviewed to contact the Police Department or Highway Patrol to give a statement.
- It may be some time before enough information is available to reach an informed insurance settlement. Families should obtain more than one estimate on property damages and more than one medical prognosis of injured victims before signing agreements.
- If substantial amounts of money are involved, the family may want to contact a civil attorney specializing in personal injury/wrongful death. There should be no charge for the initial interview. Ask for a written appraisal of the case and fee schedule.
- Notifying the county prosecutor/district attorney to offer full cooperation to see that the criminal case is effectively prosecuted is advised. The prosecutor may charge the defendant with offenses not listed on the crash report.
- The family should call the local Social Security office and inform personnel there of the death or serious injury and inquire about survivors and disability benefits.
- Records of all expenses related to the crash would best be filed in one place. These will be orders, victim compensation claims, and deter essential for insurance settlements, restitution mining actual damages in a civil suit. Include burial and medical expenses, lost wages, loss of other income, ongoing medical treatment.
- Counseling and psychotherapy.
- As a friend, give this brochure to the victim family members and suggest they call their nearest MADD chapter.

One last word of advice...

As a caring friend, plan to be there for this family on a regular and ongoing basis. The most intense feelings of anger and frustration often do not surface until weeks after the crash, especially when grief is enhanced with frustrating legal matters. Many of their friends and relatives will have withdrawn by this time expecting the family to carry on as usual. You can be a real friend by continuing to listen and being willing to talk about what happened.

HOME PAGE

"HOW MANY CHILDREN DO YOU HAVE?"

by Rob Beck

How many times have you been asked "How many children do you have?" For most people, it is as common as asking your name or your hometown. It is a socially acceptable question among strangers because it is basic and non-threatening. Most parents are proud of their children — I want to talk about them. It is a good "ice breaker." This is true in most cases, but for the parents of a deceased child, it can evoke an almost paralyzing fear — both of the question and how to answer it.

My wife, Elizabeth, and I have had to face this question since our son Michael and his fiancée, Lori Pfann, died after being hit by a drunk driver on Mothers Day, 1982. We have three other children, Jean Marie, Christina, and Emily.

Elizabeth and I recognized the problems in answering this question, but were afraid to bring it up to one another because we each thought it would be too painful for the other. We both attempted to avoid the occasion which would create the question; and, if that could not be avoided, we made sure the other spouse was not around to be hurt or embarrassed.

Well, the inevitable happened. We were together, could not escape, and each had to answer the question. You guessed it. We gave different answers! I said "four." Elizabeth said "three." The poor couple who asked the question looked at one another and asked just how long we had been married. We then started to stammer and stutter as we attempted to get our act together and come up with a unified answer. We then tried to explain Michael's death. That made matters worse. The other couple became quite uncomfortable, and began quickly fading toward the nearest door.

When we got to our car later that evening, we began to discuss our answers. Elizabeth had answered "three" because she anticipated a follow-up sequence of questions that might require her to disclose that she had a dead son. She did not want to feel that empty spot in her stomach when she had to state in words that Mike is dead. I answered "four" because that was fact — we had four children. To me, saying less than four was somehow denying that Mike ever existed. But doggone it, he did exist and no matter what the world said, he continued to exist.

As we talked, we recognized that there was merit in both answers. We felt guilty about embarrassing the other couple, for making them feel uncomfortable on our account. In that respect, the answer Elizabeth gave left a bit more room. If asked about the activities of the other children, she could discuss the three girls and never mention Mike. I had not left such a fall-back position. It became clear that there is no "right" or "wrong" answer. Whatever answer fits you, gives you the most

comfort or strength, that is your answer.

In our case, and I stress, *our case*, Elizabeth and I decided that we would answer the question "four." We are learning...each day...even though the days have turned into years since their deaths...to talk about Mike and Lori. We loved and admired them so much. We had so many great times with them. Those great moments and memories are special and wonderful. To deny the existence of their deaths would require a denial that they ever existed. Such a denial would mean the loss of all the wonderful things they brought to us. While remembering those things still brings pain, we are learning to live and tolerate that pain.

Mike and Lori and all the other children who have been taken from us parents are like rare, beautiful, extinct flowers. The remembered pictures of them in our minds permit us to again savor their unique and separate beauty and, every once in a while, I believe I can again smell and touch them. We are again proud to answer the question, "How many children do you have?"



under our wings a little longer?" Parents of crash victims feel guilty for having allowed their teenagers to have a car or motorcycle. It is difficult for them to realize that the best parents of an adolescent are honest about their opinions but do not stand in the way about the child's decisions. They will need reassurance that the struggles they had with their child were a normal part of adolescent development and they did the best they could.

When their adolescent dies, the grief of parents usually has a bit of bitterness in it because such a great investment has been made and has now come to naught. Just as they began to turn loose, to let the youth spread his wings, an unexpected and violent crash aborted the natural process.

The Death Of An Adult Child

For mature parents, being predeceased by their adult child is intolerable and unnatural and produces a special sense of guilt. They, too, feel that if they had been better parents, they would have effectively intervened to protect the adult child from his untimely death. Anger about the death can be displaced on the surviving spouse and grandchildren, especially as insurance settlements and wills are ironed out.

Parents of an adult child who has died often find themselves extremely lonely. The spouse and the children of the deceased are often the major recipients of condolences and comfort, and not enough people realize that the elder parents are grieving deeply.

So many recollections bring you to me

Your insistence on being just YOU

Stubborn we said, but no, you were right

You know what you wanted who else too

Friends, probably college life, romance from afar.

Sorority joys, world troubles, future dreams

"Mom, don't expect grandkids or even marriage
for a while, maybe never."

You prepared me it seems

Thank you, Valerie, for being our daughter

Your mother and dad love you so

We didn't tell you that very often

So now our tears must let you know

B) CATHERINE D GILFILLAN
IN MEMORY OF VALERIE

This space is within me all the time it seems

Sometimes the empty space is so real I can almost
touch it I can almost see it. It gets so big
sometimes I can't see anything else

THE WORKS OF MARY STANFORD

When death comes it does not ask your age
Or give you a time. Or a place.

It just leaves you a memory of someone you love
with all your heart.

Wish you could see, hold and never part

In your mind and memory you always see those
children playing happily

WITTENBERG CATHERINE CAPPS
IN MEMORY OF RICKY, II AND PHILIP, 7

RONALD J. KNAPP

Beyond Endurance When a Child Dies

SCHOCKEN BOOKS
New York

5

The Murdered Child: A Tragedy Beyond Compare

When we are forced by circumstances to think about the death of children, we can sometimes conjure up images of how a child might die. Most of us think of a hospital setting where the child, after a long struggle with a fatal disease, surrounded in the final moments by loved ones, slips into a coma and dies quietly. Or we may bring forth images of sudden, unexpected death, such as under the wheels of a car or by drowning in the neighborhood swimming pool. These images are justified because they represent the usual ways that children die today—after an illness or by accident.

We are seldom able, however, to conjure up images of children being murdered. It is difficult to comprehend this type of destructive act. In many respects the murder of any human being represents an act that is uniformly condemned by all. The violent and wanton destruction of the human body, particularly when it is a child, is often too gruesome for the mind to grasp without engendering a severe emotional reaction accompanied by denial and perhaps repression of such thoughts.

Just how do we describe a "murdered" child? I think it is accurate to say that such a child is like any other child—a boy or girl, a teenager perhaps—who happened to be in the wrong place at the wrong time. These are not wayward children in any sense. They are not juvenile delinquents who lose their lives in gang fights, although some are indeed killed by their peers. They are ordinary, normal, everyday, "run-of-the-mill" kids who are picked up after school or at other times by pervers, who become involved in one-of-a-kind arguments over silly things with aggressive youths, who break off relationships with jealous partners, who inadvertently become associated with the "wrong kind of people," or who are the innocent bystanders

while crimes are being committed. What happened to these children could happen to any child, anywhere, anytime.

There does seem to be one common characteristic shared by the murdered children in the present analysis. They were all older. This is not to say that younger children are not murdered. However, younger children are usually sufficiently protected by the family so that they escape the kinds of situations where murder is most likely to occur. The median age of the murdered child in the present sample was 19 years (the youngest was 16; the oldest, 25). So in this sense they are not "children" at all but young adults. However, I will continue to call them children, since this is how they were referred to by their parents.

A Most Painful Loss

(1) Of all the ways a child might die, murder is surely the most devastating and painful for a family to endure. For one thing, murder represents a *sudden* loss, which in itself throws the family into violent turmoil. There is no time to prepare; it cuts deep and swift, like being run through with a cold blade. The whole family's equilibrium is shattered—suddenly. And it usually takes a very long time to fit all the pieces together again.

In addition it is a *violent* death, which presents the family with the very real problem of coming to terms with the fact that the child may have suffered before dying. This one aspect, perhaps more than any other, greatly complicates the family's ability to resolve its grief. Parents will often dwell on this aspect for months, unable to escape the thoughts or the horror that the thoughts conjure up.

There is another important aspect of murder which deserves mention, and that is its deliberate nature. Accidental deaths, for example, are often sudden and violent, but never planned; there is no element of "intent" involved. And this is really what distinguishes murder from accidental deaths. Murder is not only sudden and violent, but *intentional* as well! With murder, there is always a perpetrator who has intentionally committed an act against the victim. Therefore a murder is defined by those immediately affected as potentially "preventable." For example, survivors will reason that if the law was strict enough and vengeful enough to act as a true deterrent, or if the police had been active in their patrols, or if the perpetrator had not

received an early parole, or if they themselves had been more vigilant or more mindful of their role as protector of their children, the act might have been prevented. There is nothing "rational" in this kind of reasoning, but it is fairly typical in the case of murder and tends to complicate one's effort to resolve the grief.

Another factor that makes murder more difficult to deal with is the absence of choice. "Choice" can stand for the main difference between murder and suicide, both of which may be sudden, violent, intentional acts. In the case of suicide, however, a choice was involved when the victim made a decision to carry out an act of self-destruction. Regardless of how we, as survivors, feel about it, we are bound at least to try to understand, and/or perhaps even respect, that choice, even though we may certainly not agree with it. In the case of murder, however, the victim had no choice, and therefore under no circumstances can such an act be respected or understood. Thus murder, because of its suddenness, violence, intentional nature, and lack of choice, becomes one of the most devastating types of loss any family can possibly endure.

"Did My Child Suffer?"

The fact that murder, by anyone's definition, entails pain and suffering is enormously difficult for families to deal with. The anger and pain the parents experience over such an act tend to dominate their emotions for a very long period of time. They find that they can think of nothing else. They become obsessed with the thought of their child lying somewhere bruised, bleeding, crying out, and in great pain. The mental imagery is very acute and exerts an enormous price in terms of their emotional well-being. If they could only be sure that death occurred quickly, they believe, this would make it a little easier to bear. However, because of the uncooperativeness of police authorities in these cases, parents can neither confirm nor deny these fears.

Parents therefore become obsessed with the desire to find out everything there is to know about the case, which leads to the revelation of many gruesome details that they would perhaps be better off not knowing. The brutal honesty of the coroner's report, which is written for official consumption and designed to reveal all details of how death occurred, but nothing concerning the probability of suffering, is usually all they have available. In addition there generally is

no one to interpret or soften the impact of these blatantly revealing reports.

This intense concern that parents have over whether their child suffered physical pain before he or she died extends to emotional "pain" as well. Did the child feel any fear or was he or she terrorized before being killed by the murderer? Did the child realize that he or she was about to die? These questions also plague parents' minds, and their inability to supply or find adequate answers perhaps becomes the most troublesome aspect of the entire grief process.

Again, there is no adequate resource that will satisfy the parents' need for this kind of knowledge. Coroners' reports reveal nothing in this area, leaving parents guessing as to the emotional state of their child as well as to the occurrence of physical suffering prior to his or her death.

The impact that this has on the survivors can best be illustrated by listening to some of the reactions of parents as they express fears and concerns over how their sons and daughters died:

A mother whose two sons were killed during the holdup of a convenience store where they were innocent shoppers:

The hardest thing for me to cope with has been the fear and terror that our sons may have felt before they were shot. Did they know what was coming? Were they afraid? My son, Keith, was shot with two guns—a .22 and a .38 caliber. My stepson, Kent, only with the .38. The autopsy said either bullet was instant death. But today I read an account of a recent murder where it said that the victim was shot twice with a .22 and then run over by a car to finish killing him! I immediately reacted—did the .22 not kill Keith? Is that why they shot him [again] with the .38? Did he suffer between the shots? All of these questions torment us and . . . you wake up in the night and it hits you and you feel you are living a bad dream or losing your mind.

A father describing the murder of his 24-year-old daughter and 4-year-old granddaughter by the father and estranged husband:

He literally kidnapped them! Took them both under threat of physical harm from my son's apartment where they had been staying. They were driving through Pennsylvania when they pulled off the road and stopped. A highway patrol car drove by a few minutes later, saw them sitting in the car, and stopped a couple of hundred feet up the road. Apparently when my daughter saw the patrol car stop, she got out of the car and began to run. . . . I lit. Bill

got out of his side of the car with gun in hand and very calmly rested his arm on the roof of the car and fired three shots, two of which struck my daughter in the back, between the shoulder blades. He then shot inside the car, killing our granddaughter, then turned the gun on himself, killing himself with one bullet through the brain. My daughter died almost instantly. She collapsed in the mud alongside the road. I did not actually witness any of this—the story was related to me by the highway patrolman who stopped to give assistance. But to this day I can still "see" her lying in the mud. I can't get that image out of my mind! My only daughter, lying dead in the mud alongside some lonely highway! How can I possibly live with this? . . . I literally come apart every time the thought crosses my mind!

A mother whose 17-year-old son was killed in a street fight:

I lie died of multiple stab wounds, and I lie awake every night thinking of him lying on the street bleeding to death. I'm afraid to sleep because my dreams are so terrible. They said he did not die right away. He must have been in terrible pain! [She begins to cry.] I just can't handle it anymore. I can't get it out of my mind!

A father whose 23-year-old daughter was raped and then murdered by drowning in a creek:

They say that drowning is the least painful of all deaths. But you can't tell me my daughter did not suffer enormously before she died! She was mutilated by that beast! This is the hardest thing for me to deal with—the fact that she suffered painfully before she died. She was such a gentle person; she must have been terror-stricken! If she had been killed in a car crash, I think I could have handled that. I can't handle this. No one could handle this!

A father whose 17-year-old daughter was killed the night of her senior prom by an estranged boyfriend:

All I can think about these days is revenge! I know it's un-Christian, but it dominates my mind. If he beats this [the crime] and gets off [is acquitted], I think now I will kill him myself! The coroner told us that Susan lived for probably 20 minutes. She was stabbed repeatedly in the chest and abdomen with a short, dull blade of some sort! Can you imagine how painful that must have been! I just keep thinking of this over and over. I can't seem to get away from it. . . . It's very hard for me to deal with the rest of my feelings because my emotions are overloaded with these thoughts of her suffering!

The agony of living the event over and over in one's mind, unable to think of anything else for days at a time, can only be guessed at. Those of us who have never experienced losses of this

type cannot in our wildest imaginations conceive the kind of experience this really is.

Parents of Murdered Children, Inc.

An organization, the first of its kind in the country, has been established in Cincinnati, Ohio, to help parents cope with the murders of their children. This is a self-help group offering friendship, understanding, and physical support to parents surviving these tragedies. Called Parents of Murdered Children (POMC), it was founded in 1978 by Charlotte and Robert Hullinger, three months after their daughter Lisa died from injuries inflicted by her former boyfriend. The organization is based on two principles:

First, a person who has recovered from a problem can be far more helpful than a professional using only theoretical knowledge. Second, when an individual helps another without charge, they both benefit.¹

Charlotte Hullinger talks about the need for such an organization and how it can help those grieving over the murder of a child. She points out that survivors have a need to talk and relate to those who are not afraid of the intensity of feelings being expressed, and who do not react in a negative or judgmental fashion. This need can best be met by establishing some common ground where individuals who are suffering such tragedies can find understanding and support from those who have already been through it. Such a group can be set up in any community where there is interest and motivation on the part of one or two individuals who have already been through it and who recognize that there is something they can do for others. Charlotte Hullinger has said:

The anger felt by the parent of a murdered child is too threatening to many people, and so they try to calm us down and discourage us from fully experiencing the intensity of our emotions. And yet if healing is to take place, it must be by expressing and working through our feelings, no matter how negative or destructive they may seem to others, rather than by denying and repressing them. . . . Why can't we express these feelings to a psychiatrist, a social worker, a friend? [Because] . . . some of us . . . find we need to talk to those who truly understand what we've been through

because they themselves have had a similar experience. . . . Many people said to me after Lisa's death, "I just can't imagine what you are going through." These are people [in this organization] who don't have to imagine; they know!²

POMC provides ongoing physical and emotional support to parents, by phone, by mail, through person-to-person contact, in group meetings, and through literature. As of this writing there are chapters in 37 states, centering mostly in the larger urban areas. A brochure available through the parent organization in Cincinnati makes the following statement, which further serves to document the trauma that parents experience:

When a child dies, bereaved parents go through intense personal grief. When a child is murdered, the grief process is complicated by intrusions into the parents' grief. Police, lawyers, and other members of the criminal justice system need information, evidence, and testimony. Television and newspapers focus on the victim and the grieving family.

Sometimes a murder suspect is apprehended, sometimes not. In either case, there is additional pain. Trials and sentencing, preliminary hearings, and postponements force grieving parents to face what may seem to be a lack of justice. What, they wonder, was my son's or daughter's life worth?³

Problems with the System

In addition to the intense problems families of murder victims have in reconciling themselves to these types of death and the many complications introduced into the grief process by the sudden, violent, intentional nature of these losses, the survivors of victims of murder face another kind of problem not encountered in other types of death.

This problem is specifically emphasized in the above quotation, and involves parents' dealings with the police investigators and the criminal justice system as well as with the murderers themselves. It seems that our criminal justice system in this country is geared to protect the rights of the accused and gives little attention to the rights of the victims and practically no attention to the rights of the survivors of the victims. This is particularly true when the victim is a murdered child. Police agencies and personnel do not fully realize the terrible impact child murder has on a family, and that many families

feel victimized by the *system* as well as by the perpetrators of the crime. The problems become very clear only to those who are left behind as survivors to deal with the criminal justice system.

One of the recurrent needs of survivors of murder victims is to see justice done through the apprehension of the guilty party and his or her punishment for the crime. The survivors of the murder victims I talked with could find little peace of mind—little resolution of grief—until punishment had been extracted. In fact, survivors were *not able* to experience grief; often they did *not allow* themselves to grieve and to express the intensity of emotion required to resolve grief as long as the investigation was continuing.

It is therefore important that survivors be kept informed of the status of the police investigation...kept informed when arrests are made, and kept informed of trial dates. It is also important from the standpoint of bringing some resolution to the bottled-up feelings of remorse and the agony of grief that the system exact punishment corresponding to the seriousness of the act. These events seldom occur, however.

One mother said:

We can hardly stand to think about the murderer's never being caught. It injures me greatly for people to say, "You may never know!"

Another mother:

I am violently upset with the police! They seem to have forgotten this case There is just no sense of closure—no real end to the whole agonizing experience.

And another:

Will I ever have peace inside about this? Will the police ever get a lead? Do they even still care? I think that the police and the public at large have forgotten this tragedy. They just don't give a damn anymore! I think this hurts maybe [even] more than my daughter's murder!

A father said:

We naively believed that the right to life was an inalienable right; the killer would certainly be caught. The coldness and suspicion received from the sheriff's office in response to queries baffled our family, for it was impossible to understand how such a crime could seemingly be forgotten so quickly.

Another mother:

We received progress reports at first, because one nice detective with the sheriff's department has been very kind and compassionate, and we called him many times. However, we had to do the calling; no one called us. Now the sheriff has ordered him not to give out any more information to us. What are we to do now? How are we ever to know anything?

The fact of the loss itself is therefore compounded by the survivors' encounters with an essentially insensitive and uncaring criminal justice system. The experiences they have with police investigators, prosecuting attorneys, and the court system so traumatize them that it becomes virtually impossible for parents of murdered children to feel the emotional and mental reactions to the loss in a legitimate and meaningful manner. As one father put it:

The grieving process is disrupted by the criminal justice procedures. As a result, one's emotional system goes on hold while one is dealing with the police and the prosecutors and the courts.

Thus grief tends to become complicated and prolonged. For many, feelings of anger, hostility, bitterness, and resentment toward the criminal justice system—very negative emotions—come to dominate their existence. These feelings and reactions remain for as long as their frustrating experiences with the criminal justice system remain, or for as long as the killer remains at large.

Robert Hullinger, the father of a murdered child and co-founder of POMC, in speaking of the needs of the group, said:

One of the things we discovered is that the whole way that survivors are treated in this country at the hands of the criminal justice system tends to be one of the greatest protractors of grief in the whole process in which we are involved.

We know that someone is out there who has murdered our son or daughter. We want that person caught—for several reasons: one, we don't think *anyone* should get away with it; two, we don't think anyone else should have to go through what we have; and three, we have a right to bring that person to justice! However, the system doesn't respect these needs. Many of us eventually come to ask, "Is there no one who cares? . . . Is there no one who is going to continue to try to find the person who killed my son or daughter?"

PLEA BARGAINING

Probably the most difficult aspect of the entire criminal justice system for these parents to deal with is plea bargaining.

When the murderer is finally apprehended, the process parents go through is almost as painful as during the search because it is at this time that parents discover what their child's life is worth! Plea bargaining, without doubt, is a concept that is most damaging to parents.

Plea bargaining works in this way. When a murderer is caught, usually one or two pieces of evidence will be lacking to bring about a first-degree murder charge. In the criminal court system today it is very difficult to get a first-degree murder conviction unless there are eyewitnesses or the accused confesses. Even with a confession, plea bargaining may have been an element in bringing about the confession. Therefore because it is so difficult to get first-degree murder convictions, and in order to bring the accused to some kind of justice, the prosecutor will plea-bargain. The accused will agree to be tried on a lesser charge, which means, if he or she is convicted, less time in prison and usually a quicker parole time.

It is at this point that parents find out the value of their child's life. Perhaps it is worth only seven years in prison! Or if the defense attorney can arrange it, the accused may be able to plead temporary insanity and get off with a lesser sentence or even no sentence! As one father said in response to plea bargaining in the case of the alleged murderer of his daughter: "We raised that child and then found that her life was worth only three years!" Robert Hullinger said:

This is one of the most painful things parents must endure: to discover the price that our society places on the human life of someone for whom we would be willing to die!

Oftentimes a person convicted of robbery will receive a sentence of 15 years, but a person convicted of killing another human being will receive only a five-year sentence! Tell me, where is the justice here?

Even if the convicted killer gets a life sentence, a life sentence does not mean what it used to. In fact there is no such thing as a "life" sentence anymore. In most states life means 7-10 years at most. That is, a convicted killer sentenced to "life in prison" must come up for parole in 7-10 years. Parole can of course be denied, but

this usually occurs only in the more publicized cases, such as with Charles Manson, Sirhan Sirhan, and other such "celebrity" killers. The usual "lifer" coming up for parole, more likely than not, will get it! In fact we can be sure that even the celebrity killers will eventually be successful in achieving their freedom as well.

Parents of murdered children experience a tremendous sense of frustration and outrage over plea bargaining as it is presently structured within the criminal justice system in the United States. There may well be a great loss of incentive and ability on the part of parents to continue in their normal patterns and functioning, and a significantly equal loss of faith in the system of justice in this country as a result of this one quirk or flaw in our criminal justice system.

Plea bargaining is only one of the problems parents encounter in the aftermath of murder. There are others just as sinister and just as damaging.

Some Special Kinds of Problems

IS SOMEONE WATCHING US

When the murderer is not apprehended, parents often live in fear that it could happen again. They grow suspicious of strangers. They grow apprehensive and fearful of new situations and new places. They become overprotective of other family members, often venturing out only when accompanied by others.

Some of the parents interviewed actually believed that they were being watched or even pursued by the murderer! This was particularly the case if the family had been the subject of an inordinate amount of media publicity. When this occurs, they realize that they are now known entities in the community. They may have reacted in a violent way through the media, expressing their wish for an arrest and punishment for the murderer. Consequently they develop fears that the murderer will return and somehow exact revenge!

Such fears can become overpowering, leading to much avoidance behavior on the part of the family. Some families even go to the expense of installing expensive alarm systems. Others buy attack dogs. Many family survivors refuse to go out at night. They become hypersuspicious when in a crowd and usually try to avoid such encounters. These fears and anxieties sometimes persist until the killer is

apprehended and imprisoned. Only then do they truly feel safe—at least, until the killer's parole!

FEAR OF FAMILY REVENGE

Another aspect of the problem emerges within the families of the victims. There is often the fear expressed by parents that someone—some member of their own family—may try to avenge the death of their son or daughter by seeking out and taking some action against the alleged or accused murderer. This becomes a particular problem if an arrest has been made and if the family gets word that the "murderer" has plea-bargained his way into a reduced sentence. It is not unusual for an older brother or another male relative of the victim to vow to "get the bastard" when he walks out of jail. This becomes another burden for parents to bear. They have lost one child to murder and now they are faced with the possibility that another child or close relative might become a murderer himself. They have lost one, there is now the possibility of losing two! Many parents have expressed a fear that this would indeed happen if the murderer escaped the maximum sentence.

PARENTAL REVENGE

In addition to expressing fear of family revenge, there is another dimension to the problem of revenge. Sometimes a parent—usually a father—will experience such hatred of the murderer that he himself will begin the process of "avenging" the killing of his son or daughter by mentally planning to "get" the murderer. I found this to be relatively rare among the families I interviewed, but in a few cases it was evident, and it becomes a double burden for the family to bear.

Why some fathers react this way and others do not is somewhat of a mystery, probably having something to do with the way they have been socialized to deal with violence. For those few who respond in this way, their anger and hatred often become overpowering and consume virtually all their time and energies.

As an example of these emotions, one father, whose daughter was raped and murdered by an 18-year-old neighbor boy, said:

There is some talk about diminished capacity; I don't buy that! If he beats this, so help me God, I'll get him if it's the last thing I do on this earth! He killed the only thing that mattered to me, and I'll be damned if he's going to get away with it!

This is a rather powerful statement by one father that really expressed the sentiments of many who were afraid to say so because they recognized that such feelings violated expected behavior in our "civilized" society.

Another father could hardly contain himself as he was relating his feelings of hatred for the murderer of his 19-year-old son. He said:

That son-of-a-bitch shot him down in cold blood! Didn't give him a chance! . . . And he's not going to walk away from this, not if I can help it! I'm not a violent man . . . but [he begins to weep] I'll do it! I'll do it!

Another father, whose daughter, he believes, was intentionally killed by her boyfriend in a "so-called auto accident," said in a very calm and calculated fashion:

I am definitely going to settle the score someday. . . . He knows I'm waiting for him. . . . I have intentionally allowed him to see me watching him, and he knows I'm after him. . . . It may take some time to find the right time, but I'll get him for what he did to my daughter!

These reactions, although evident in only a few isolated cases, illustrate the intensity of emotion that can impinge upon some survivors. This obviously creates enormous additional problems with which the family must deal. They have to work through not only their grief and fears, but their own personal revenge as well.

POMC can sometimes help allay feelings of revenge. One mother said of her experience with the organization in trying to deal with her feelings of revenge and hatred:

The idea [behind the organization] is to permit outbursts of feelings. You can scream and cuss and swear and cry all you want and no one will say "Why don't you shape up?" . . . There's a healing in that. It's alright to hate the person who killed your child. We don't teach turning the other cheek. The hope is [with support from those who truly understand] that after the hate, you learn to forgive yourself and others around you and, hopefully, the murderer.

ANGER AND HELPLESSNESS

Survivors of homicide deaths find that news coverage, police investigations, the search for the perpetrator, and the trial greatly strain their ability to adjust to the loss. The impatience, disorganization,

anxiety, and uncertainty are often extended far beyond usual limits, complicating efforts to complete the grief work.

A common characteristic shared by most (but not all) parents of murdered children is anger—anger directed at the event itself and toward the murderer, but also anger over what is not being done to apprehend and prosecute the guilty. Although I have commented on these feelings earlier, they bear repeating in light of the significance of anger as a legitimate response to losses of this type.

Many parents indicated that they carry so much anger and hostility that it is hard, if not impossible, to get down to the grief and mourn their loss in an appropriate manner. The hostile feelings that dominate their existence tend to block any efforts at reacting in a "normal" fashion to the loss itself. Anger and hostility, when experienced with such intensity, tend to hide genuine feelings of grief and remorse. Parents, to be sure, feel an intense sadness. They experience pain, bitterness, and anguish. But these feelings are coupled with anger and hostility, which become the dominant emotions, particularly in the immediate aftermath of the loss. Consequently many parents cannot adequately mourn their loss in a way that would be beneficial and lead to a resolution of their grief. There are simply too many hostile and angry feelings in the communication channels.

Associated with anger are feelings of helplessness, which can become overpowering at times. There is also bewilderment and frustration, as indicated earlier, over being kept ill-informed by police investigators, and even open outrage over their experiences with the judicial system and with all the events in which they become involved in the aftermath of the death.

Charlotte Hullinger tries to put these attitudes of helplessness, frustration, and bewilderment into perspective. Commenting on some of the specific experiences parents have with the criminal justice system, she says:

Try to imagine . . .

. . . the agony of sitting through a trial in which a defense attorney—and later the media—tries to cast aspersions on your daughter's character and paint a completely false picture of her, intimating that she somehow brought it on herself;

. . . the sense of utter helplessness while waiting outside in the hall as the trial is being conducted because the defense attorney does not want the jury to see the grieving parents, and so

uses the ploy that he "may" call them as witnesses and then never does.

the bewilderment of never having anyone from the prosecutor's office contact you to let you know when the trial will be held, and so you never find out; or of being told, "You're not important to our case; it wasn't a crime against you; I don't have time to talk to you";

the frustration of having a trial postponed three times and finally learning that the confession was thrown out of court by a judge because of a technicality, with no possibility of appealing this one judge's decision; and finally,

the outrage at being told by an insensitive policeman when asking if anyone has been arrested yet for the murder of your child, "I don't know, if anybody is charged, you'll see it on TV."

Such experiences outrage parents and stoke the fires of anger, resentment, bitterness, and hostility. These are negative emotions which must be nullified before parents can get down to the task of working through the normal vestiges of grief.

GUILT

Another emotion felt by survivors of homicide victims which tends to complicate the grief process is guilt—guilt for not having protected the victim. In fact, guilt can and often does become stultifying. It can consume one like a superheated flame. It can become overpowering to the point where one loses the ability to function. Just as excessive concern over whether the child suffered physically or emotionally can dominate one's existence, guilt can also become debilitating.

Although the intentional nature of murder leads one to believe that, unlike accidents, these crimes could perhaps have been prevented, in reality no one could have prevented these deeds. So guilt is often irrationally based.

In this study the typical case was a rape-murder. But there were also cases involving random murders where the person just happened to be in the wrong place at the wrong time. There were cases of mistaken identity, where the murderer thought the victim was someone else. There were several cases of murder following a fight or argument, where such an outcome would have been impossible to predict. Looking at what was known about these cases at the time revealed that there was nothing anyone could have done to prevent them from happening. Certainly parents were not to blame. But

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many parents did in fact blame themselves for what happened, using the argument "if only . . ." as the basis for their guilt. Listen to how several mothers and fathers expressed personal guilt over what happened to their children:

A father:

If only we had insisted that John be home at an early hour! . . . [son shot and killed at 3 A.M. while returning home from his girlfriend's—no suspects]

A father:

If only we had been home that night, Virginia might have decided to stay in! . . . [daughter raped and strangled]

A mother:

If only I had cautioned him more diligently about riding with strangers! . . . [16-year-old son brutally beaten and murdered while hitchhiking home from school]

A mother:

If only I had listened to what Peter was telling me about this guy, perhaps we could have prevented this! . . . [17-year-old son killed by a "friend"—no apparent motive]

A father:

If only I had been more receptive, I could have seen this coming! . . . [daughter involved in drug culture, murdered by her boyfriend]

A mother:

If only I had insisted on his taking our car that night instead of his, he would not have stopped at that station! . . . [19-year-old son randomly shot down as an innocent bystander during a service station holdup]

A mother:

If only we hadn't raised her to be so trusting and friendly! . . . [daughter apparently picked up by a stranger, raped, and murdered]

A mother:

If only we had been more vigilant and concerned about the kinds of friends Bill had! . . . [son shot and killed by a friend during an argument]

They felt that they had failed as parents. By "allowing" this to happen—and many parents believed that they were ultimately responsible—they felt that they had committed the worst sin imaginable.

Fathers, particularly, harbored guilt. It is commonly accepted in our culture that the male, in addition to being the breadwinner in the family, is also its protector. It greatly disturbed fathers that they were not "there" when needed. Consequently many blamed themselves for the murder, knowing full well the irrational nature of this feeling but nevertheless being unable to rid themselves of it. In some cases it becomes a burden so heavy that the individual simply collapses under its weight and withdraws from contact with the world. The person escapes into the dark void of depression.

(Of course if one can survive long enough, guilt and depression eventually subside. But it sometimes takes a long, long time. And in some cases it will take a heavy psychological toll, leaving an indelible and tender scar.)

Not all parents suffered guilt, however. Those who in the immediate aftermath of the death received the most information on precisely what happened were often better able to work through feelings of self-blame more easily and more quickly than those whose information was sketchy and incomplete. Apparently, being fully informed of as many of the details as possible does help one deal more effectively with any guilt that is otherwise engendered.

STRAIN ON THE MARRIAGE

Statistics show that in approximately 70 percent of the families of children killed violently, the parents end up in the divorce courts or become separated.¹ Marriages hit rock bottom. Although less than 20 percent of the families in the present study experienced family dissolution at the time of the interview, almost all knew of others, through their support groups, who had experienced disintegration. And in about a third of the remaining families taking part in the interviews, although intact at the time, dissolution seemed inevitable.

Generally it was found that a breakdown in the ability to communicate effectively and the inability to draw support from one's spouse were the important causes of the collapse in family organization. Each parent is so devastated by the loss, and suffers such mas-

sive disorganization and confusion, that neither can possibly help the other in a way that is supportive and comforting. The guilt both parents feel is often translated into hatred of the murderer, but also hatred of themselves as well. Minor family problems that were perhaps more of a pest than anything else before the murder became blown into exaggerated major concerns after the murder. In addition, parents are often maligned by their own parents, their neighbors, their friends, who find them somehow at fault. Many times parents are at different points or stages in the grieving process and suddenly find that they can no longer offer support to or even communicate with the spouse since neither knows where the other is coming from. And there seems to be no way out of these dilemmas.

Perhaps I should note that in *The Courage to Grieve*, Judy Taalebaum refers to Simonton's formula for an effective support system:

- 25 percent of your support comes from inner resources (from yourself);
- 20 percent from your spouse; and
- 55 percent from the environment or community.⁷

This is important to realize since couples seem to expect 100 percent from each other and this leads to difficulties.

There is an old cliché that "grief halved is grief diminished." Where both parties are grieving but in different ways and functioning in different stages, where they are bewildered and filled with fear and hostility and bitterness, this cliché becomes a myth. There can be no sharing, no supporting, no comforting, no communication between two people who are themselves coming apart at the seams. How can one help the other? How can one be of assistance to the other when that person is struggling desperately just to keep himself or herself afloat? We cannot really expect one to keep the other from drowning!

So they lose confidence in their ability to keep the family functioning. Parents lose their spontaneity. They say that they feel old and worn out. They are constantly exhausted. They lose their ability to function effectively within their assigned family roles. Parents lose interest in their jobs. Homemaking activities come to a standstill. Mothers and fathers lose faith in their ability to survive as a unit. They feel that they can no longer accept the responsibility for someone else. They feel that they need to get their act together, and

perhaps they can do it better on their own. Thus divorce or separation becomes an inviting alternative.

Where strong family ties and good communication patterns existed prior to the loss, where the family was close knit and mutually supportive, there was a much better chance that the family would not be negatively affected. In fact, for some families the experience actually produced a positive effect, strengthening primary ties between members and bringing them closer together. The experience actually bonded some families into a rigid unit, increasing their ability to survive any crisis. We will investigate further some of the differences in the way families responded to all types of tragedies in a later chapter.

Other Concerns

Additional concerns faced by survivors which compound and complicate the grief process include the following (in the words of Charlotte Hullinger):

- Isolation, helplessness in a world that is seen as hostile and uncaring, and that frequently blames the victims.
- Growing public sympathy for perpetrators of crimes of passion (Jean Harlow, etc.)
- Sensational and inaccurate media coverage.
- Financial burden of funeral and medical expenses, of professional counseling for surviving family members, of hiring private investigators when they feel that law enforcement officers are not doing an adequate job or when there are too many unanswered questions.
- The memory of a mutilated body at the morgue.
- The feeling that the murderer, if he's found gets all the help; that as parents of murdered children you don't have any rights.
- Getting back the personal effects of a murder victim, even those that are not essential to a trial, or after the trial is over.
- The effect on the other children in the family, especially the bitterness and loss of faith in the American criminal justice system.

Any one of these concerns can become overpowering for the parents, rendering the family incapable of resolving it. It takes enormous effort by the members to keep these concerns from breaking the back of the family as a viable unit.

Is All This Normal?

It should be noted that the feelings and emotions experienced by parents in the aftermath of these losses are in no way to be defined as "abnormal" reactions. Robert Hullinger points out:

Anger, hostility, helplessness, frustration, and guilt, although very negative feelings, are nevertheless genuine emotions experienced by all who suffer losses of this type. One cannot get rid of these feelings and emotions by going through some kind of counseling.

Seeking out a therapist for help leaves one with the notion that what one is suffering is something abnormal, something we should be rid of! The only help—the only real help—available to these parents are those who will live through the pain and deal with them, those who are now themselves going through the same kind of pain!

Although we recognize the "normality" of feelings and responses generated by the murder of a child, perhaps we might add that nondirective counseling, i.e., simply lending a receptive ear—allowing the parents the opportunity to talk and work through the myriad of feelings they are experiencing—can be beneficial. Structured in this way, professional counseling may indeed be very helpful in resolving some of the critical personal problems that losses generate. This may be particularly true where the individual does not have access to a support group and where he or she can find no one available in the community in the form of friends, neighbors, or relatives who are interested in serving in the capacity of "helper."

Perhaps I should also note that some do not allow themselves to feel the pain. They do not allow themselves to grieve openly or, for that matter, to express any emotion. This too is normal. The experience is too unbelievable for them to grasp all at once. It will take more time for these individuals. They should not be rushed or hurried. It will take time for the mind and body to unravel the mysterious details of what has happened to them.

Just What Kind of People Are the Parents of Murdered Children?

In summary, how do we describe the parents of a murdered child? First, we must not be deceived into thinking that all want to go out and return the favor! Some of course feel enormous revenge; but most victims are not vengeful people. They are instead scared

people—scared of possible revenge inflicted upon them by a murderer still at large. They are *hurt* people—hurt severely by having their most prized possession ripped from their grasp in a most gruesome way. They are people in *pain*—great pain—more pain than those of us who have never been through it can imagine, a pain so deep that for many there appears to be no surface to it. They are *frustrated* people—frustrated by the layers of bureaucracy known as the criminal justice system, which essentially treats them as nonentities, with no rights. They are also people *alone*—alone in a world where they can find few others in the immediate environment who really understand their torment and who are willing to allow them to share their deepest feelings and sensations.

It seems that only when they encounter others who are like themselves in terms of sharing a similar experience in life can they find contentment and some sense of security in realizing that what they feel and experience is indeed *normal*, and that they are not insane or rapidly becoming so.

In the next chapter the discussion will turn to the fairly as the unit of analysis and an attempt will be made to examine a number of characteristics of the modern family that contribute to defining child death as a crisis. This discussion will be somewhat theoretical in nature. This chapter can be skipped over without loss of continuity, if the reader so desires.

ENTERING THE WORLDS OF THE GRIEVING CHILD

Rachel Burrell

April, 1989

I want to remain wide open to whatever I can learn and observe about the grieving child. This means staying away from conclusions which might prevent us from learning more. I have a feeling that the variables are infinite. Developmental variables are often used to categorize the expected responses from children, but I would argue that these may be blinding us to the intrinsic nature of each individual child and her grief process. (The following quotes are from children between the ages of 4 and 16. For the most part, these are universal feelings, not limited to particular age groups.)

Many, many pieces factor in. What is the sex, age, and birth order of the child? Is the family functional or dysfunctional? Has there been a divorce? What was the cause of the death, and was it sudden or long expected? What are the cultural considerations? Are the family finances changing? What is the culture's death ritual? What are the allowed or expected responses of the family and the child, to confide or to cover? Is the child holding a parent to blame? Is the child holding himself at fault? What kind of support does the child receive from his peers and "significant adults?" What are the infinite variables which surface as the child speaks and is silent, or spits in rage, bears in disgust, or crawls in a lap to cry or cuddle?

Each child's story is unique as an experiential and traumatic happening. The variables are infinite, as should be our responses. Each child perceives his story uniquely...there are not adjectives enough...or verbs enough...or time enough to retell it. In the early days of Fernside, an 8 year-old who had watched the long death of his younger brother touched our hearts with his words. "There isn't time enough; no, we don't have enough time for me to tell you what happened."

Despite actual age, a child prone to rely on constructive logic might posit. "My younger brother died, I will be the next to die, then my older brother will die..." "Not true!" the outside observer jumps in to correct or to notify the child that surely he is mistaken--this is not true. Yet this has been said by a 4 year-old named Quinn. Never mind that the chart says he would not say it...that he has not yet reached a developmental level where he would be capable of the construction. His construction, however faulty, may be very comforting and therapeutic. He has come up with a means of inserting logic (which is control) because he has found the words and because he has found a sequence...something out there "must hold." Something must be following rules: something must be true; someone must be in charge. Who is next? A question on everyone's mind.

The shattering event has ruthlessly thrown the child from one safe and tidy world into several--all of them foreign, all of them worlds in which he feels powerless, vulnerable, out of control. Trust has been stripped away and he has been laid bare, naked, alone, defeated. He then wrestles with the emotions which infect and insinuate themselves into that self, that traumatized self which he so unwillingly now becomes. Robbed of choice, he wrestles with one emotion or several at a time; and fails to recognize himself in his new worlds. Where did he come from? And where is he now?

The worlds of the grieving child overlap and are not easy to define, but I believe there might be five: the world of self, the world of altered perceptions of self, the world of the happening, the world of self in relation to the person who died, and the world of dreams and nightmares.

THE WORLD OF SELF is the daily world of continuing obligations and tasks and includes not only what the child normally does so that his body will continue to function what and how he is expected to continue to perform. The child must continue to breathe sleep, wake up in the morning, etc. The child is expected to behave as usual at home, at school, and in the neighborhood. But now at home--he is unable to control his bowels, a task he had mastered last year. It is a struggle to get him up each morning. But now at school the child finds she cannot concentrate--her mind shifts into another world. She has stopped menstruating, and will not go to Health Class because they are discussing the reproductive system. "I felt like I had a hole in my head, but I knew I had to pass the test. I started breathing fast; I could feel my heart beating faster. My face was burning up. I got up and ran to the bathroom and threw up." But now in the neighborhood--she is short of breath and thinks she left something behind whenever she leaves the playground. He is stealing things now and hanging around with the bad crowd.

THE WORLD OF ALTERED PERCEPTIONS OF SELF AND PLACEMENT IN TIME involves confrontation with the changing scene and a shift within the family unit. What were once accepted beliefs are challenged. A feeling of isolation is present. Jealousy may be directed at the person who died.

God didn't protect us. Is He really in charge? "I will never forgive God for taking Eric. No reason he has is good enough for me. Some people said God needed Eric, but what about me! I needed him more than God did. I do not believe anymore that God is good or that things happen for the best." "It is not God's fault that Danny died. God does not make disease and he doesn't cause accidents to happen. God is on the side of life."

Will our parents feel normal again? "Sometimes I think Mommy would be happier with MaryLou. I even asked her, would you be happier to go to Heaven and be with MaryLou?" Who will be the next to die? "My baby sister died. No, my Mom is going to try to have another baby. I don't think she will come home with a baby. I don't think she knows how to have a baby anymore." Can parents still function as adults? "My Mom and Dad leaned on me after Randy died. I mean they didn't know what they were doing. I led them around but it was like the blind leading the blind...somedays I thought something would explode inside me. One day I asked the teacher if I could go home and she was real nice and called my Mom. Mom came in the car, but I didn't think I would make it to the car in time. I was so close to crying." Can my parents protect me? "My Mom isn't strong enough to save me from burglars. I don't know what we would do if a burglar came to the front door and tried to get in. Daddy was really strong, but Mommy would be scared."

What choices do I have? How can I change things? "If I ran in front of a truck, would I be killed? I would, wouldn't I? Then I would be with Daddy." "If I opened the door of the car I would fall out. So why don't we all do it and we would be with Anthony again?" "I am trying to understand life and death here. I don't know what to think. Maybe I did something to cause God to punish me...you know, like sin or something like that. What do you think?" "Mom, do you think that this is the beginning or the end of the world?"

THE WORLD OF THE HAPPENING centers around the events of the death, the causes, the images, the lack of information. "The blood came out of here--this is what caused it." "Her lips were caked with blood--there were little dots on the sheet." "Why didn't I get to see her?" "I still try to figure out how it happened."

How could I have prevented it? "Maybe if I had gone with him that day..." Was it my fault or someone else's? "When he wouldn't let me do what I wanted, I said I wished he was dead." Was I not good enough? Did I see it coming? Did he cry? Did it hurt? Do I have the power to reverse this? "Sometimes I think if I had been hard enough, she will come back."

Is it wrong to feel relief? "The cancer was inside him. He promised he wouldn't die. He couldn't do anything. He was sort of staring. He couldn't move his eyes. His eyes stared at the ceiling. When he was dying he asked for something to write on but stuff was coming out of him and he couldn't write. He sort of waved his hand like this. I knew he was telling me he loved me." "I was sort of like glad when he died. He had suffered so much and you know, well he couldn't do anything anymore. He was just lying there. We couldn't run and play or fight together anymore. Yes you might say, I was sort of glad when he did die."

THE WORLD OF SELF IN RELATION TO THE PERSON WHO DIED poses the question: Where is he now? The answer, of course: He is with me. "I talk to him all the time." "I take great gulps of air hoping to take in molecules that are my father." "I eat breakfast with her and get her dressed." "She and I are one person." "I become him. I wear his clothes. I like to draw and write like him." "Is he with God? I think so. I know his spirit is there, with God, I mean. But his body...I do think about his body. I think I asked my Mom if he was a skeleton yet? I wonder what does he look like now. I would go to the grave and dig him up. Is that crazy do you think? I would only just like to hug him again." "A friend made a quilt out of his clothes and we can keep a piece of him with us forever." "She was 9 when she died. Now I am 9. I wonder if she looks still like she did—I mean like she was 9 or if we are the same age or if she got older." "I don't want Mommy to be burned up, you know, it is called cremation. How can her body go to God if it is all burned up in ashes? I wonder if the ashes came back together again, would she be all black?" "Does he look down on me?"

THE WORLD OF DREAMS AND NIGHTMARES hold thoughts and worries and wishes of which sometimes the child isn't consciously aware.

"He was lying on the couch. He was real sick—like he couldn't move or anything. I was in the kitchen getting something out of the refrigerator. This Doberman Pincher from across the street came in the front door of the house. He started getting my brother. I yelled. I tried to get him off and snuff, but I couldn't. He was biting right into my brother's arm and was like eating him up. It was horrible. I guess I tried to save my brother, but I couldn't and I was so scared myself. I ran away. I woke up and my heart was beating and I was so scared. I cried and ran into my Mom's room. She tried to talk to me about the dream. She said maybe the dog was sort of like the cancer eating him up and that of course I couldn't save him. I felt really bad. I thought maybe I didn't try hard enough to save him. Now I am really scared I will get that dream again. My brother used to lie on the couch like that before he died...it all seems pretty mixed-up...what was real and what I dreamed. But well, no, I know the dream part was a dream, but mostly, I just don't want to keep getting that dream."

"In my dream I am with my Dad. We are walking along the way we always did, in the woods where we walked our dog. All of a sudden I looked at him and his face was all weird and scary and I tried to get away from him. He had some kind of power. He wanted to get me, wanted me to go with him, I think. I woke up then. I used to get a dream something like that."

"I am afraid I will get this dream again and again. I am in the accident with my mother, and I see her face. Her glasses have gone into her face and it is bloody and awful. She is thrown up on a hill by the side of the road. I wish I never saw her face like that. I don't want to dream it again. Help me!"

"I dreamed my Mom would come out of the casket and try to get me to go inside with her. I would be real scared."

"My Dad used to come to me in a dream and looked real white in the face. He wanted me to do a dance with him. I think he wanted me to come with him to where he was. I didn't like the dream."

"I run all over the house looking for my brother. Seems like he is lost and maybe if I look in every room, I will find him."

"My sister was sinking into sort of like new-mixed concrete and I tried to pull her out, only I couldn't. I dreamed that twice."

Children also tell us of their wonderful dreams in which they see and sometimes talk with their loved one. The dreams are often full of symbols and meanings. These dreams can be a great comfort for the individual and even the rest of the family.

"I met my father in heaven in my dream and I drew this picture of how it looked. There were many little rainbows all around us and snowflakes reflected all the colors. Daddy ran to me. (He was in a wheelchair before he died.) He called me 'my funny little girl'! I showed him our new doggie. He promised he would come to me again."

The worlds of the grieving child overlap and impinge on one another. The child may not have the capacity to sort out or to define or to free himself from the turmoil. Our role as an adult interacting with a grieving child should be one of listener and one of validator. The child should be allowed to express all feelings freely without judgmental comments. She should be assured that she is not crazy...that her feelings are normal for what she is going through. It may be that her world will never be the same and that the only decent response is for the adult to acknowledge this possibility.

But all grieving children are wise and have within a great capacity for being loving and compassionate. Given time to express and claim their feelings, their insights and heightened awareness may lead them to newfound selves. They may learn to wish and sing and laugh and dance again. They may become more able to connect with others and become good listeners themselves.

INTRODUCTION

Steve Sunderland & Rachel Burrell

This manual is prepared for teachers, counselors, victim-assistance staff, and any helping professional or mutual support group that is concerned about helping children grieve a violent death. It is our belief that you, the helping staff, can do more to improve the chances for healing during the grief process than almost any other group. Our belief is based on working with hundreds of grieving children both at our center, Fernside, and with children at schools. Time and again we have seen just how powerful the teacher has been in the promoting of constructive processes of child grief. And, sadly, we have repeatedly seen the complications in the child's grief process that have arisen when teachers, counselors and others have ignored, humiliated, minimized or punished the child for expressing their grief.

Working with grieving children is not easy if our myths about their grief dominate our behavior as caring adults. Working with grieving children may be frightening if we, as helping professionals, have continuing fears about death and the impact of death on children and their families. And, of course, working with grieving children may be difficult even if we are prepared to face their reality, their pain, and their confusion. Children can sometimes confound our best attempts to listen, to try to assist. These realities make it a priority that education for helping grieving children be offered to helping professionals and mutual help group staff. We need to see ourselves as part of a community of learners seeking to find the clues to both understanding children in grief and then assisting them with their coping. Doing this with and for children raises the possibility that children can integrate their grief into the developmental stages of becoming a healthy child and adult.

Everyone grieves differently because everyone has had a different kind of emotional attachment to the person who has died. There is no one right way of grieving or helping grievers. Many grievers feel they are going crazy because so few people acknowledge the dead loved one and respect the grieving process of the survivor. Most of what is known about grief has been learned from working with adults. Many of our "beliefs" about the grief of children are untested theories. Yet, it is clear to see that there are "themes" in the grief of the child that are worth noting and responding to with greater concern and caring. The primary themes are:

1. Children experience all deaths of loved ones as "violent." The taking away of a loved one rips the child's world apart, plunges the child into a world of pain that he/she does not have a "vocabulary" for discussing, and causes the child to believe, temporarily or permanently, that the world is a dangerous and painful place.
2. Children in the grief process experience a continuing set of fears about the violent death of other loved ones. Children "believe" another death is likely and it may be a remaining parent or sibling. This causes major difficulties in the relationships with surviving loved ones as the children do everything possible to prevent the next death.
3. Children feel lost in the grief process when the surviving adults are themselves lost in their grief process. The belief in safety, caring, and security may be put in serious jeopardy if the child faces a family in which there is little attention capable of being provided due to the adults' difficulties in coping with the death.
4. Children feel doomed, violated, and defeated when teachers ignore or criticize their grief process. The child's attempt to separate the worlds of death from other worlds becomes overwhelmed when the teacher fosters a belief in the class that the children are grieving "too long," "too loudly," or "in the wrong way for a good child."

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We gratefully acknowledge the artistic contribution by Helen Replogle of the painting and logo for this conference.

About the artist: Helen Replogle is a local freelance artist who studied at the University of Cincinnati, College of Design, Art, Architecture and Planning. Helen's specialization is in fine art, using a wide variety of mediums, for private and corporate clients. Her work has been in a number of shows locally and around the country, with the next show running July 1 through 31 at the U.C. Health Sciences Library. Helen lives in Anderson, Ohio, with her husband and two children.

HELPING CHILDREN GRIEVE A VIOLENT DEATH

Steve Sunderland, Ph.D.

Professor of Social Work, University of Cincinnati;
National Board Member, Parents of Murdered Children;
Chair of Board, Fernside: Center for Grieving Children

1. **Introduction:** Helping children grieve a violent death of a family member, and/or a friend is a critical social need. In many ways, the child is an invisible survivor: children may have the most difficulty in expressing their hurt, shock, and pain. The child's grief, in too many cases, is *unseen* amidst the rest of the family's trauma, and *unheard* by those in social and educational agencies where the child participates. The stigma connected to a violent death of a family member and/or friend appears to add a thick layer of indifference by teachers and counselors who could normally be expected to respect and ease the child's daily pain. The failure of helping agencies, professional and self-help groups, to prepare to work with grieving children adds a greater burden to the surviving adult family members' ability to cope. The surviving parent or parents are confused by the complicated attitudes of their children and may be so overwhelmed by their own frustration, hurting, and pain that parents may find their already limited parental energies diminished. POMC can take an active role in clarifying for parents, teachers, mental health counselors, victim assistance staff, and other interested parties just how important it is to respect the grief of children following a violent death by acknowledging the child's grief as real and by taking steps to assist the child and his/her family in their daily survival.

2. **Three Major Problems Faced by Grieving Children:** The central and primary problem is that *children grieve differently from adults following a violent death*. Basically, children do not have a developed "vocabulary" concerning death and violent experiences. Children lack earlier mastery experiences which they can draw upon in terms of coping with the shock and pain of the violent death. With the inability to constructively use the psychological behavior of "denial" in their coping, the child may act out his/her fears about the world in self-destructive ways and in ways which threaten others. The "language of violent death" is overwhelming unless the child can share their confusion with other children and/or adults who respect the child's painful unarticulateness. Most children of all ages cannot "talk" about this pain in ways that adults can share. The face to face benefits of self help groups in which people share similar experiences is rarely a setting in which children can experience any kind of trust or comfort. Children need others to respect their needs to act out their pain and to portray their real feelings of anger, defeat, guilt and their fear that they are crazy.

The second major problem is that *the violent death of a parent is grieved differently than the violent death of a brother/sister/friend*. When a parent is killed, the other parent is or can be totally taken up with his/her own grief process, the legal process, the investigative process, and the other major related problems of unexpectedly losing a spouse. The surviving child is more easily lost in such a situation and tends to depend upon other family members and teachers for assistance in coping. The major fears of these children about the possible death of the surviving parent can become overwhelming for the child. He/She may lose the capacity to sleep, eat, and be out of the sight of the surviving parent. The child may totally wish to stop going to school, or going out to play, or do anything that does not include staying close to the surviving parent. This child may see no purpose in continuing to live and may feel so totally defeated by life and so angry at the surviving parent for not protecting the family that they may be steps taken toward self-abuse and destruction.

Children who have had a parent killed may not be able to directly "talk" about their desperation. The fears surrounding the possible death of the other parent may not be brought out in words; indeed, no one can "convince" the surviving child that there will not be another murder. Children in these situations need the respect of surviving family members and the school systems they

participate in on a regular basis. Mutual help groups need to alert parents to the realities of children, actively seek to educate teachers and counselors, and get assistance for their members.

When a brother or sister is killed, the surviving child's grief reaction may become complicated. Many children feel most bonded to a brother or sister and may develop a belief that surviving is "unfair" without the other sibling. The consequences of this belief are seen in a variety of self-destructive behaviors on the part of the survivor which need rapid attention. These children need to know that other children who have "lost" a brother, sister, or friend share many of the same feelings of anger, guilt, and bitterness about the unfairness of the sibling's death. One-on-one discussions with other survivors can be most helpful and can supplement group activities.

The third major problem is that *unresolved children's grief following a violent death can lead to major developmental barriers for the child*. Adding a violent death to the ordinary developmental problems of children can often destroy the capacity of a child to function with the "normal" tasks of being a child. Grieving children may be "at risk" of losing their capacities to learn how to emotionally grow without overwhelming fears, nightmares, and guilt. Surviving children may have language problems in terms of regressing to earlier language; they may have trouble knowing when they can express their tears, cries, screams; these children may not be able to focus in schools on the class goals or even understand lessons they have learned before the murder; and children may have lost the capacity to "play" as children and not assume "responsibilities" which are unrealistic for their age and experience. Surviving a murder of a family member or friend ages children with an unmerciful force. Some children react by "going backwards," some by "falling apart," and some seem to be "totally unaffected" in their demeanor, or so the surviving parents or grandparents report.

Children need to have others respect their ways of grieving, especially if they appear "abnormal." Children are thrown "upside down" by a violent death and the world of trust and caring is ripped apart. And this reality may exist for a long time, clearly more than two years. How can family members, teachers, and others be made aware of the struggle of children to survive?

3. Helping the Parent, the Teacher, the Counselor, and the POMC Chapter Help the Grieving Child: The child grieving a violent death can be helped to slowly heal in his/her own way when parents, teachers, counselors, victim assistance staff, and POMC groups assist each other in learning about how the child can be further wounded and/or healed. The child can be wounded in his/her grieving process by nine factors:

A. Ignoring, downgrading, humiliating, and trying to separate the child from his/her grief accelerates the process which destroys the child's coping skills.

B. Letting a child know that you fear the concept of death and "public" forms of grieving adds to the child's pain.

C. Adding additional work, at home and school, contributes to the cracking of the child's strength.

D. Questioning the child's length of grief and the depth of the grieving can seriously undermine the child's limited functioning.

E. Permitting other adults and children to make fun of tears and other public forms of grief weakens the child's capacity to survive.

F. Ignoring the child's public acts of self-destructive behavior, i.e., cutting wrists, scratching skin, talking about suicide, stopping of eating, etc., may force the child to make more dramatic attempts for help.

helped by recognizing the wounding, the mistakes, the shortness of our temper, the limits of our patience, and the total inability to return the murdered loved one. Yet, with love, patience, and the support of others even this terrible reality can be accepted by the child.

4. Setting Up Grief Support Resources for the Child Grieving a Violent Death. The problems facing the grieving child can be dramatically helped by the setting up of support groups for children—an agency which works mainly with grieving children, their families and teachers, and/or through the development of a network of support resources.

A. Setting Up a Support Group. POMC and other grief self-help groups can provide a resource for children by trying to put together support groups for children of the members. The group might meet weekly, be based at a school, in a home, or at a child care facility. Volunteers with experience working with grief and children could be involved in the planning and implementation. People who like to work with children can be involved in very important ways: designing indirect ways of helping the child express his/her grief, i.e., puppets, paints, music, wrestling, games, etc. The support group should be guided by the principles of support groups and not be a classroom where "teachers" teach the "appropriate" grieving methods. Consultation with mental health professionals is also important if there are concerns about the coping methods the children. (Most children will not be able to talk for very long about their grief; rather, direct grief discussions should be mixed with other activities.) Having pizza, cookies, and pop is also helpful as a way of giving children a chance to relax and discuss whatever they would like.

B. Setting Up an Agency for Grieving Children. The needs of grieving children may require more time, energy, and skill than a support group. In Portland, Oregon and Cincinnati, Ohio two agencies aimed at working with children who are grieving have been established. The focus of these agencies is to work with children in separate groups, with surviving parents and with teachers and counselors who have some important connection to the children. Both agencies grew out of work with grieving people and follow similar philosophies of enabling the children to assist themselves in the grieving process through mutual help. Both agencies have a small professional staff supplemented by large volunteer groups. Both agencies are very new and are already working with hundreds of children in afterschool, evening, and weekend groups. For more information on these agencies write:

The Dougy Center
3909 S.E. 52nd Street
Portland, Oregon 97706
(503) 775-5683

Fernside: Center for Grieving Children
P.O. Box 8944
Cincinnati, Ohio 45208
(513) 321-0282

C. Setting Up a Resource Network. Grieving children can be helped by communicating with other grieving children through letters and/or by phone. Fernside has set up a "Loving Listener" phone list and a "Pen-Pal" network for those children who cannot come to the afterschool programs. Grieving children can also be helped by communicating with adults through letters and phone contact. Parents also find such resources helpful. Teachers and school counselors may be helped by calling the local PMOC chapter and talking with parents and others who have grieving children. Teachers and counselors should be encouraged to make contact with victim assistance staff as well. POMC chapters can identify a resource list for phone consultation and send it to all school principals. Phone consultations with POMC board members on school related matters may also be helpful.

G. When counselors, teachers, and parents do not share their fears about the child, this increases the likelihood of the child feeling like he/she has to survive in two dangerous worlds.

H. Failing to change home and school environments to accommodate the child's changing feelings of despair and hopelessness may increase the child's desire to abandon either home or school.

I. Quitting on child by labelling child as "hopeless," a "delinquent," a "crybaby," or by behaviors which communicate the same message, drowns the child and leads to an even deeper sense of hopelessness.

Each of the above items can become daily "points of pain" for the child, wounding the child and disturbing the child's grieving process. The healing process involves the reversal of each of these processes and can be summarized in four major points:

A. Healing will occur when the child's grief is acknowledged by parents, teachers, friends, and others in the family and social network. The recognition that death is final and that grieving is essential provides a temporary balance to the grieving child. In this way, they "lean" on our words of respect, and the load seems lighter.

B. Healing happens when the child's feelings of sorrow are shared by members of the family and by teachers and friends. Sorrow is like a heavy shadow covering the child with a weight of pain which frightens and isolates the child. Sharing sorrow pokes light into the shadow, acting like a puff of wind that can lift the feelings of the moment. Sorrow can be shared by hugging, crying together, laughing together at pictures the child can endure looking at, and by a gentle touch to the arm or head.

C. Healing happens when the child's workload is made lighter, both in the home and the school. Children are not the same following a death as they were before the death. They have a new burden, the burden of death. This weight translates into a pressure on the mind which makes the body feel much heavier. It takes enormous concentration and skill to manage this new weight, to figure out how it can be worn each day, and what to do when the burden becomes just too heavy on those many days of total pain. Cutting back on cleaning the room, doing dishes, and homework can permit the child to focus more directly on the grieving process while trying to survive both at home and in school.

D. Healing happens when there are processes for sharing which involve stories, songs, silences, and group respect for both the dead and for the grieving process. The child feels abandoned when a violent death occurs: every major symbol of security is ripped at until the child feels that there are two of themselves—the "old" self before the murder when the world was right, and the "new" self which must contend with the world as raw pain. Children; in shattered families and classrooms, need to know that there can be a form of healing, albeit a very slow and confusing one. Day by day a group process of respect can permit the child to suspend his/her terror about the broken world and try and begin to heal. This is a family and community effort where possible. Healing is small steps in this new parade of survivors trying to hold hands and find the way out of the darkness together.

The healing process is not simple; each child who is grieving will have their own version of struggling with the effort and work of grief. A lot can be done to stop the wounding of the child caught in the world of surviving; some important things can be done in the healing process by caring and compassionate friends. The problems are many; yet there is no simple short cut for the child or for the helping person and agency seeking to assist. For a while it may seem that all paths taken are going nowhere; yet, this too is worthy work in the process of exploration. Healing is

5. **Conclusion:** Help for the child grieving a violent death can become a major priority for families, teachers, counselors and others related to the survivors of murder. Too often the grieving child's invisibility in the whirl of activities surrounding a murder accounts for little if any help being given to the child. Myths about children's grieving adds to the children's pain, especially when the myths suggest that children's grief is less important and serious than that of adults. Steps to change the helping process in order to include grieving children are now being taken by several groups. In time, the grieving child's needs will become as important a concern as the adult's problems with the grieving process. POMC can be a national leader in this critical effort by alerting its members, opening a space in its meetings, and working for the developing of a serious support network and agency for children.

* The author gratefully acknowledges the assistance of POMC boardmembers Hyman Eisenberg and Wanda Bincer, M.D., and Rachel Burrell, Director, Fernside: Center for Grieving Children, and Paul Burrell, Fernside, in the preparation of this article.

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Although adults usually learn how to "take care" of children, unfortunately, we sometimes haven't learned how to really listen to them and to respond in supportive ways. When young children suffer loss, a "helping-healing-relationship" might be the strongest support adults can offer.

In order for adult caregivers to be effective, it is necessary to establish "safe environments" for bereaved children that allow the freedom to express grief without the fear of judgment, isolation or abandonment.

An essential helping quality is the ability to convey empathy to the grieving child. Empathy means being able to recognize and understand the child's inner feelings FROM THE CHILD'S POINT OF VIEW. This means having the courage to become involved in the emotional suffering which is a normal part of the work of grief.

Empathy focuses exclusively on the child's feelings and assures the child that there is a supportive level of understanding from the adult. It does not require that the adult experience the same emotions as the child — that would be sympathy — an overinvolvement which is, fortunately, not necessary in order to be helpful.

Achieving a sense of merging or unity with the child requires a sensitivity to the "here and now" of the child's thinking and feeling world. To achieve this awareness means being open to not only what the child SAYS, but to the nonverbal cues, such as facial expression, tone of voice, gesture, and posture that may reinforce or even contradict his or her verbal message.

Empathy is communicated when the bereaved child feels that you "understand." To simply SAY, "I understand how you feel," is not enough. Genuine empathy reaches the grieving child where he or she is emotionally RIGHT NOW, with the result that the child feels understood and supported.

But understanding by itself is not enough. The adult must also accurately convey that understanding to the child. The ability to let children know that their feelings are understood helps them feel secure, trusting, warm, and affirmed. This ability is the essence of a "helping-healing-relationship."

Sometimes adults fear that by acknowledging anger, sadness, fear, loneliness, hurt and guilt in grieving children they will only "make matters worse." Such hesitation is generally a defensive form of self-protection for the adult who finds it threatening to respond at the emotional level.

However, just because feelings seem threatening doesn't mean the bereaved child should be encouraged to avoid expressing them. When a sensitive, caring adult encourages children to acknowledge and talk about feelings, they are comforted to discover the adult as someone with whom it is safe to explore such scary feelings.

We should never avoid what a grieving child is feeling because we are afraid he or she cannot "take it". Obviously, the

child is already "taking it." The only real question is "Will the child experience these feelings in isolation or in the comfort of loving adults?" To allow grieving children to live alone during their time of grief is to mismanage a helping opportunity.

The ability of caring adults to communicate accurate empathy has a number of benefits for the child whose life has been touched by death. Among them are the following:

1. A truly helping relationship can only be built on the foundation of empathetic communication with the child.

2. The child who feels empathetically understood is more likely to share deep and personal feelings.

3. An adult's genuine commitment to understanding creates a trusting, low-threat environment for the child, which takes away the need for the self-protection or isolation.

4. When a child has been made to feel safe in exploring his

Bereavement and Children: *AN EMPHASIS ON EMPATHY*

by Alan D. Wolfelt, Ph.D.



Paulo, Aged Two by Pablo Picasso, 1923.

or her own feelings, the first step has been taken toward self-understanding and reconciliation of grief.

5. Empathy makes it possible for children to clearly understand thoughts and feelings which may have been puzzling before.

While adults may possess tremendous amounts of knowledge about grief, without empathy there is no base upon which healing can occur. It is the foundation upon which the following other helping qualities are built.

RESPECT

An adult's respect for a child means caring for and affirming the child as a separate person without being possessive. The sensitive adult will be receptive to the notion that the "child will do the teaching" about his or her grief experience. Any defenses or normal resistance to the expression of grief are best met with patience and understanding of the function they are serving in the child's mind. Respect also means never purposely damaging or hurting a grieving child's self-esteem. It is important to have a sense of "working with the child" toward healing grief's hurts. The opposite of this respect would be the adult who assumes that a "superior knowledge of grief" qualifies him or her to project what is best for the child to think, feel, and do.

ACCEPTANCE

Acceptance means supporting, understanding, and accepting the child, while in no way judging his or her behavior during this stressful time. Acceptance does not suggest approval or disapproval. It simply means that each child is a unique person, deserving of respect and acceptance. Non-judgmental acceptance requires an awareness that grieving children may ask questions or make remarks that are shocking or seem irrelevant to adults. The ability of loving adults to respond without shock or embarrassment helps the child to feel unconditionally loved.

The child should also be allowed the opportunity to be involved in the decision-making process regarding such matters as attending the funeral, viewing the body, and visiting the grave. Obviously, age and other influences will vary the degree to which children are able to participate, but their need to feel involved still exists and should be encouraged by adult caregivers.

WARMTH AND CARING

Adult warmth and caring is expressed through a sense of personal closeness to the child. Remember, two-thirds of all communication is nonverbal, and behavior always speaks louder than words. Tone of voice, eye contact, posture of involvement, facial gestures, and physical comfort are but a few of many nonverbal ways of communicating. As the saying goes, "People don't care how much you know until they know how much you care." This is particularly true with grieving children who are instinctively sensitive to who understands and cares and who does not. Love, patience, and the ability to hear and respond to the child's needs are the qualities that are most important.

(For those adults who have had no previous contact with the bereaved child, sincere expressions of warmth and caring are particularly helpful in the initial building of a supportive

relationship.)

SELF-AWARENESS

For adult caregivers, self-awareness means understanding how one's own experiences with loss might influence the capacity to be emotionally available to the bereaved child. Adults who are able to separate their own needs from the needs of the child they wish to help will be better prepared to enter into the caring relationship effectively.

Helpers who are self-aware may ask themselves:

- Does this child's experience with loss remind me of some of my own losses?

- Am I hearing what this child is saying, or am I projecting my own thoughts and feelings?

- Am I expecting this child to have the same response to loss that I have?

- Where can I share the feelings that are stimulated in me as I support this child in grief?

Self-awareness also gives adult caregivers an opportunity to learn what a bereaved child has to teach them about being helpful at this time.

DESIRE TO UNDERSTAND

To be effective in helping a child learn and grow from loss, the adult must understand what the "inner world" of the child's experience is like. While the adult may not totally understand the child's world of grief, the child will usually sense a desire to understand, and will be very forgiving, even of adults who might say and do some things that are potentially destructive to the helping process. However, if the child senses a lack of adult interest in attempting to understand, the most valiant of caregiving efforts will often go unnoticed.

From the child's standpoint, communication involves either talking about thoughts and feelings, or acting them out through behaviors. However, sending out a message does not insure the completion of the communication process. The child must believe that the message has been received and understood by the adult before the process is complete.

Children's expressions of grief are frequently seen in action, not words. This highlights a need to search for and understand the meaning attached to a child's effort to communicate.

A FINAL THOUGHT

In addition to the communication of empathy, the five qualities described above have the potential to create a healing environment that encourages the open sharing of grief between people of all ages. Beyond these qualities is perhaps an attitude that grief is not an enemy to overcome, but a privilege to be experienced as a result of having loved.

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and your local MADD chapter to learn:

How to Obtain Copy of Crash Report

How to Obtain Copy of Autopsy Report

How to Obtain Information About
Defendant

How to Contact Investigating Officer

How to Contact State's/Prosecuting Attorney

How to Obtain Medical Records of Injured Victim(s)

Helping Children Cope With Death in the Family

By
Janice C. Harris, ACSW-CSW
and Angela Bennett

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MOTHERS AGAINST DRUNK DRIVING



Helping Children
Cope with Death
in the Family



makes it possible to choose the best words for each child. The telling is the beginning rather than the end of a long process of sharing. Children have mental structures that are different from those of adults. They are not miniature adults. They have their own distinct ways of determining reality and of viewing the world. Understanding how children at various ages perceive death may help caretakers to cope with this task.

Children's concepts of death are influenced by many things. Age, religious beliefs, cultural or ethnic values, and the relationship to the deceased person are some of the important factors that will affect their understanding of the death. The reactions of the surviving caretakers play the most important part, however, in how children cope with death.

Infants And Toddlers

A child of two can sense loss and suffer the feelings that go with loss, but he cannot understand what death is. The child will pick up on the grief and anxiety in his surroundings and will need touching or holding. Explanations, however, will not be understood. The child this young can only understand that someone is present or not present. Before about the age of 18 months a child will simply not relate to the loss of a person unless that person was a major caretaker. An older infant will show grief for the relationship through anger, crying, searching, lack of appetite, and finally quiet resignation. His grief is bound up in his complete dependence for life support and with the loss of security. He is just beginning to see himself as a separate person from the mother or major caretaker. A two year old needs to trust that someone will be there to feed him, pay attention to him, play with him,

drunk driving crash. For months after, his parents or police would find him lying on the highway trying to be hit so he could go be with them. At this age, he still had difficulty separating fact from the mystical. His mind could have more easily been at rest with a description of how the crash caused them to die and their bodies had to be buried than the presentation simply that his brother and sister now lived in heaven. Bryan Mellonie and Robert Ingpen's book *Lifetimes*, (Bantam, 1983) is excellent for use with this age child.

Only if the deceased person is significant to the child, such as a parent, grandparent, or sibling, will the child feel extreme sadness for the loss. The sadness may relate to abandonment. He may conclude that his loved one departed because he was bad. His experience of morality is generally that bad behaviors are punished and good behaviors are rewarded. It is helpful to point out over and over again that the loved one did not choose to leave and abandon the child, but that there was a specific cause of the death.

Ages Seven To Eleven

Around the ages of seven or eight the child attributes life to movement in nature, although not so much to inanimate objects like toys. A cloud is alive as it blows across the sky. Water is alive when it gurgles and runs in a stream. Because there is now an acceptance that some things are dead, there may be a beginning of an interest in what happens after death. As the child is able to relate to some of the mysteries of life, he is able to relate to some of the mysteries of death. However, he is not ready for many answers. Most commonly, seven or eight year olds become fearful of death because they realize for the first time that it is real. They may feel de-

and communicate with him. At this age he can fairly easily transfer his focus of feelings from the person who is now gone to another person

What one does is far more important to the child this young than what one says. Generally, it is best done with large doses of tender loving care - holding, cuddling, and stroking

Ages Four To Six

The child this age believes that anything that is active is alive. A wind-up toy seems alive when it moves and a child may cry when it stops performing for him. He cannot accept that death is permanent and will clearly expect the deceased to be alive again soon. Therefore, he may accept the news in a rather matter of fact manner. He may talk of the death of the person in the same detached way that he may talk of the death of a pet. This may be disturbing to the adults around him and their reaction may be confusing. Loved ones do not cry or whisper when a pet dies, as they do when someone they loved just died. This may be frightening to the child who receives no explanation he can understand and no assurance that it will soon end. Crying may be more out of confusion about what others are experiencing rather than the death itself.

For a child in this age range, death may best be explained in physical terms. Because his thinking is very literal and bodily oriented, death may best be explained as follows: "His heart stopped beating and no one can make it start up again. Therefore, we won't be seeing him moving and talking any more. We will bury his body in the ground because he is not able to do or say anything any more."

A six year old lost his brother and sister in a

Mr. J. P. ...

vastated at the thought of losing a parent. Some of their questions may indicate fears of their own death. Death can now be seen as an attacker who takes life. Although able to accept the finality of death, many of the factors of early childhood still apply. It is important for children of this age to express their sadness, anger, fear, and guilt.

The guilt feelings are associated with the fact that children of this age still live in a world where magic is a frequent visitor. Almost all children at sometime or another wish to eliminate their parents and siblings and may even dream of different ways to do it. The younger child in this age range may believe that his "death wish" actually caused the death! Children are much more susceptible to this feeling than adults or adolescents, since children cannot call upon their intellectual resources to persuade themselves of their innocence.

Because the child of this age is concerned with understanding death as more than a result of natural causes, he may search to find a "cause" for the death. He will then direct anger toward someone or something that "caused" it. In the case of car crashes, it is best to help the child focus his anger on the driver of the car so that he does not have to search for other acceptable causes.

Even more than the younger child, the child of this age may fear that death is a punishment for improper behavior. He may fear that his naughty behavior has brought about the death of his loved one, and that he is likely to be punished for it. He may fear that his surviving parent or he himself will be the next to die. Because the child simply cannot understand death on the intellectual level of adults, it is more difficult to rid himself of feelings of anger and fear and guilt than for adults.

A more adult concept of life and death develops roughly between the ages of nine and eleven. At this level the child has learned that only people, plants and animals are alive. He can now think abstractly but still does not have clarity about meanings and values. He only knows that something has happened which cannot be explained or understood. A child of this age is not only sensitive to his own feelings, but can now enter into the feelings of others. As a result, he is more understanding of what the loss may mean to others. In short, he is able to empathize. The child in the upper end of this range not only needs support and comfort, but can be a source of support and comfort for others. Opportunities to be helpful to others during the crisis can actually help the child deal with his own feelings.

Adolescents (12 to 16)

The adolescent is on the threshold of independence. He lives in an intense world of self discovery and is primarily concerned with life, identity, status, and peer pressure. He has developed adult-like concepts of attributing life appropriately but is often still faced with his immaturity socially and emotionally. According to child development experts, if there has been security and healthy development from birth to three, there is apt to be fairly untroubled movement into adolescence. If, however, the early years were fraught with uncertainty, conflict, and lack of trust, adolescence will be stormy.

The young adolescent often rejects his parents' standards. Twelve and 13 year olds have difficulty with their parents because they are beginning to move out into their own individuation. Therefore, when death comes to a parent, there may be an extreme internalization of guilt. It is normal for him to be pulling away from home

ties, but he only feels guilty for having done that when the parent dies

The mid-adolescent, 14 through 16, has achieved a better self-identity. He does not accept his peers without question and has learned to compare their values to his. He is not as self-centered by this time, although he may still turn thoughts toward his own death as he is faced with the death of another

Death is unusual, sudden, and violent to the adolescent. It is something he simply does not want to think about. At best, most adolescents are insecure. Sometimes their self destructive behaviors, such as alcohol or drug abuse and playing chicken in an automobile, are means of saying "I'm not afraid of death — I make a play-thing of it." But the real meaning may be "I'm so afraid of death that I may be able to control my fear and insecurity if I can make it a game." Moving fast and keeping the music loud can be an escape from having to face the fears.

When met with the loss of an important relationship the adolescent's self-centered values may cause him great fear, guilt, anxiety and anger. He feels that no one has felt the deep and powerful feelings he now feels. No one has ever loved as he loves or grieved as he grieves. The older adolescent also has the capacity for empathy with other grievers, so the pain is doubled.

Because the adolescent forms more intimate relationships with his peers than with his parents, it is advisable that networks or groups be made available for adolescents who have experienced the death of a loved one. The adolescent often responds well to another adult willing to listen to him and to assume a surrogate parent role with him. While reluctant to participate with his own family in grief or support groups, he may re-

Some Things Not To Do

spond well to a pastor, school counselor, or another adolescent who "understands." Care-takers of a grieving adolescent should not be discouraged if he reaches out to someone other than the family. That is normal for his stage of development.

There are a number of explanations of death which, though well-intentioned, cause in children more confusion, doubt, guilt, and fear than understanding. These should be avoided

1 "Your Daddy has gone away for a very long time." Without further explanation to the child he will interpret such a statement as desertion. He will then go on to view the desertion as punishment and react with strong feelings of guilt and resentment. He must know that the deceased has not chosen to go away.

2 "Mommy is now in Heaven," is in itself impossible for a young child to understand when in fact the child knows that the mother is buried in the cemetery. A child under the age of seven or eight will have a difficult time understanding a concept of heaven. It is wisest to explain death to him in terms of a body's lack of ability to function. The child may be told that the mother's soul is in heaven, although this may be difficult to grasp. But, that the mother's body is buried in the ground at the cemetery should be made clear. He will eventually find out and feel deceived if he had not been told where the body is.

3 "It is God's will," can cause a child to be extremely angry at God and to question His goodness and love just at the time when the child needs all the support he can get. It is better to explain that it was probably God's will for the deceased to live a full and happy life. However, someone was irresponsible and caused the death to happen before anyone else was ready.

4 "Grandpa died because he got sick." seems like an acceptable explanation on the surface, and yet without further explanation the child may assume that everyone who gets sick dies. Therefore, he may become extremely fearful of any kind of illness. Likewise, saying that "Grandma went to the hospital and died," can make it easy for the child to conclude that hospitals make people die.

5 "To die is to go to sleep," is easy to say to a child without considering the repercussions. If this is the only message the child receives, he is very likely to develop sleeping problems, fearful of his own death. A clear distinction should be made between sleep and death.

6 Sending the child off to be with other relatives or friends during the crisis makes his adjustment more difficult. It is best not to spare him the reality of what is going on. A parent should not deprive the child of learning that he can tolerate the experience — that he can have a loss, be saddened by it, and still not "go under" because of it.

1. Respond to the child's feelings. Obviously the younger the child, the less ability he has to verbally express the feelings. However, the caretaker should give the child plenty of attention and do a lot of touching, holding and stroking to help the child feel secure. The child who is older and more verbal should be encouraged to talk about his feelings and fears. His grief and anger should be accepted. The best way for a child to become comfortable talking about his feelings is for the adult to be comfortable talking about his own feelings.

2. Reassure the child as he brings up fears. Many of his fears will be irrational, but perhaps they can be understood in terms of his development. Only as the caretaker understands his developmental level can he effectively address the child's needs. Responses to fear should be direct, simple, and clear, accompanied by touching and holding. The child can usually accept explanations when he knows there is adequate support from the adult doing the explaining.

3. Spend time in play with the child under the age of ten. Children often communicate their deepest feelings through actions. It is best, therefore, to respond to their feelings with actions. After the first few weeks following the death, the caretaker should take time to sit down and play with the child, not guiding the play, but allowing the child to express whatever he wants to through his toys. Responses should affirm what the child is doing. "Your doll got angry when his

Daddy left." "Your doll is crying in the bed. What is she sad about?"

4. Understand how important missed events are. If Dad had been teaching his son how to cast a line or how to pitch a tent, and then died, this may be the focus of much of the child's concern. It may seem that he is more upset over fishing and camping than over the loss of his father. This is not the case, but it is the way the young child is most able to express his loss. He needs sympathy and support for his feelings and not criticism or rejection because of the manner in which he expresses them.

5. While sharing as much of the family crisis as possible, do protect the child from witnessing an emotional collapse on the part of one on whom he depends. He can usually handle the feelings of sorrow, loneliness, and anger, but to witness a collapse will bring on unnecessary anxiety and insecurity.

6. Help the child understand that physical death, in itself, does not hurt. The family is crying because they hurt inside. The sadness comes from the fact that a relationship has been lost that meant much to everyone.

7. Allow the child age seven and older to attend the funeral. This confronts the child with the reality that death has occurred and helps him acknowledge his loss. A child of this age should be given time prior to the funeral to view the body and say goodbye in his or her own way. The child, therefore, will find his place as an important member of the group of

mourners. The child should be given a detailed explanation of what to expect at the funeral. Perhaps he will want to visit for a time with the funeral home director who can answer his questions. While the child should be encouraged to attend the funeral, he should never be forced. Likewise, he should not be forced to kiss or touch the deceased, although it is perfectly all right if he wants to.

8. Understand and accept, if the child substitutes feelings he can handle for those he can't. He may giggle or laugh at things that are not funny. The wise caretaker will understand this and not condemn the child for coping in the best way he knows how.

9. Allow the child to share experiences of memorial observances and visits to the cemetery. Going to the cemetery works against avoidance, denial, and repression of painful feelings. The sadness felt in that place may help the child to move on through his grief.

10. Don't be afraid of tears and don't be in a hurry to stop the flow of tears when they start. It is natural and normal for children to wash away grief with tears.

11. Talk about the death when the child wants to talk about it. There is little to be gained in answering questions that are not asked. The answers should be both honest and adequate for the question asked, depending on the child's development level.

12. Encourage the child to write a goodbye letter to the deceased. If this can be done prior to the burial and placed in the casket

Resources

with the body, it will be most reassuring to the child. If this is not possible, encourage the child to write the letter anyway. It will help him be able to express feelings and thereby enable his grief process.

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GOOD GRIEF: WHAT IS IT?

"I am bothered by death and unknown things. I don't believe in reincarnation, but some of my friends do. Is there reincarnation? I know people die, but I am afraid I won't be able to handle it. I hope someone I love dies. Could you please help me?"

This recent letter from a young person illustrates vividly the challenges that face adults who try to help children and adolescents understand and deal with death and dying. Though it may not be the easiest thing you've ever done, helping them to learn about such realities and to deal with grief and loss is well worth the effort.

The death of a pet, a neighbor, or even someone on TV provides a "teachable moment" that is an

opportunity for young people to begin to learn about death before the death is that of a close family member.

Many adults wish their first personal experience with death had occurred before they had to cope with the death of a loved one as a young adult. Most feel they were unprepared to deal with such intense grief and loss.

When a family member or friend dies, children and adolescents must deal with this loss and with the resulting grief, and this is where you can play an important role. Whether the death is that of a friend or a family member, whether it is sudden or anticipated, and whether it is a result of an accident, illness, murder, or suicide, it challenges the coping skills of youngsters. Early attention to the needs of these young people makes it possible to keep them psychologically healthy and to prevent the development of later emotional problems.

We hope this booklet will help you raise young people who are able to deal with loss in a healthy way—a way that will make their grief GOOD GRIEF.



GRIEF

is a part of crises involving loss. Our grief in the possibility of good grief grows out of the understanding of crisis, particularly as it is described by the Chinese using two pictographs. One stands for danger, the other for opportunity. In any crisis there is the danger of being overwhelmed, but there is also the opportunity to develop coping skills that will allow one to deal more successfully with a similar situation in the future.

THE FOUR TASKS

In order for their grief to be GOOD grief, bereaved children and adolescents must accomplish four psychological tasks. Young children who develop coping mechanisms that help them with these tasks will be well prepared for losses that occur in their youth and adulthood in life. The four tasks are:

- Understanding
- Grieving
- Communicating
- Coping

As you become familiar with these tasks, you will see ways you can help young people deal with death and dying.

The material in this booklet is prepared for parents and other relatives, teachers, medical personnel, group leaders, counselors, camp staff, religious educators, clergy, funeral directors, hospice workers and others who have an opportunity to help bereaved children and adolescents.

UNDERSTANDING

To understand, one must be able to make sense of death in general and of a particular death. One must understand at an appropriate level what has happened and why.

Understanding means knowing the person who died is no longer alive and will never be part of our lives in the way he or she used to be. It's best to provide an honest explanation that can be developed as the child grows and matures. Children's questions will usually indicate the amount and level of information they want to know.



Helping Children and Adolescents Deal with Death and Dying

Written by:

Sandra Sutherland Fox, Ph.D., ACSW
Director, The Good Grief Program
Age Baker Children's Center

Three predictable factors interfere with children's and adolescents' ability to accomplish the task of understanding:

- The way we define death for children
- The development of children's understanding of death and dying
- Moral thinking

THE WAY WE DEFINE DEATH FOR CHILDREN

The best and most basic way to help children understand death is to explain it as what happens when the all of the body stops working. This definition fits with what children observe when they see a dead animal. The bird can no longer fly or dig up worms. In the same way, a human can no longer do his or her body's work.



with what children observe when they see a dead animal. The bird can no longer fly or dig up worms. In the same way, a human can no longer do his or her body's work.

Some families believe that when a person dies, his body stops working but they believe he has a soul or a spirit that lives on in heaven or on earth. They believe he lives on in memory or on a plane. This basic explanation can also help children understand untimely deaths. We can honestly tell young children that most people live to be quite old. But occasionally there is an illness or an accident that is so severe that doctors, hospitals, nurses, and others are unable to keep that person's body working and he, she dies.

Avoid comparing death with sleeping, getting lost, expiring, kicking the bucket, cashing in one's chips, pushing up the daisies, buying the farm, or other euphemisms that confuse youngsters because of children's poor concrete style of thinking.

For the first month, following the death of her baby brother during the night, Angela refused to go to sleep at bedtime. The death had occurred during the Christmas holidays and her parents simply told her an angel had picked up the baby and taken him to heaven. We didn't want to say that, but Mother explained. When I told about the baby's death, Angela understood. The two things you should know about angels: First, you have an idea how many of them are on the loose at Christmas time. And do you know they pick up children and they don't bring them back? And besides that, angels don't have heads, but you don't dare go to sleep at night because you couldn't see one if it came to get you. Angela's parents' efforts to protect their child created confusion, enormous fear, and extremely difficult sleep problems! She needed to understand that the baby's body had stopped working and he had died, a very unusual thing for babies. Then she could probably have dealt with an angel taking the body, soul or spirit to heaven.

It is usually not helpful to tell a child that when you see Grandma at the funeral home, she will look just like she is sleeping or is at eternal rest. When youngsters are told that they will be seeing Uncle Joe "at a wake," they sometimes report having wanted to see him "awake" who to be never died. He came back, but about saying, "Mum died because he was so poor that God wanted her to be a flower in His garden in heaven." It is a sure-fire way to convince a child he has lost the respect he has earned.

THE DEVELOPMENT OF CHILDREN'S UNDERSTANDING OF DEATH AND DYING

Children's understanding of death and dying changes as they grow and mature. Age parameters vary for each individual child, but most children pass through a sequential developmental stages.

Infants and Toddlers (Birth - 3):

Many people feel young children have no understanding of death and dying. Perhaps, however, such games as Peek-a-Boo lay some groundwork for concepts such as being and non-being, here and not here. Stories recounted by parents give a clear indication that many children under the age of 3 do indeed have some ideas about death. I listen to these young stories and find out for your self what they know.



Preschoolers (age 3 - 5):

These youngsters see death as temporary and reversible. They believe the dead live on under changed circumstances - either on a cloud in a city called Heaven or in a box under the ground connected to other boxes by tunnels. Preschoolers ask many questions, often gross and glibly, about how one lives on. No matter how well death is explained, many will persist in their belief about its reversibility. These children are likely to be literal and concrete in their thinking.

Latency/Early Elementary (ages 6 - 8):

Children in this developmental stage see death as a person or spirit that comes to get you if you are not fast or clever enough to escape. From their perspective, three groups of people die: the elderly and handicapped (because they can't run fast enough) and the klutzes. Klutzes are people who die who are neither elderly nor handicapped. In an effort to make themselves feel different, and therefore safe, children will often find some specific way, frequently negative, to differentiate themselves from people who die.

Preadolescents (age 9 - 11):

These youngsters have a more abilit understanding of death, seeing it as final, universal, and irreversible. They are interested in rituals and concerned about how the world will change because of the death of a particular person. This age group is frequently described as having the easiest time dealing with death and dying because they tend to intellectualize as a way of coping with the experience. They can sometimes sound crass and uncaring.

Adolescents (age 12 +)

When adolescents are being asked to take responsibility for their own lives, they are confronted by experiences that challenge their belief in their own immortality. They often engage in risk taking behavior, seeming to test the limits of that immortality. Most adolescents are embarrassed when parent or brother or sister dies, they don't want to be different from their friends. Their grief at times death and dying tends to be expressed with peers rather than with family members, often causing family members to believe the adolescent is not grieving.

MAGICAL THINKING

Children believe they have the power to make things happen in the world. They often believe death is the result of something they did or didn't do, think, or say. If they say "drop dead" to a person who later dies, they are sure they caused the death. If someone tells them "you are going to be the death of me" and that person dies, again they may believe they were responsible.

Magical thinking allows youngsters to put together sequential events in a way that they appear to have a consequential

Six year old Jonathan was crying loudly at the time of the death of his friend, Billy, from a motorcycle crash. One day

he announced that he understood what had happened.

"She died because she ate her cookies before her sandwich." On the last day she was in school before her death, he had seen that happen and he could think of no other reason for her death.



While children's magical thinking can be charming, it can also be tragic.

One morning during "Show and Tell," 7 year old Henry announced that he had killed his Mother the previous day. He had given her a requested sip of soda and she had died! His teacher tried to learn more about what had happened and discovered Henry was a "junk food freak" whose family had told him junk food would kill him. Henry was distraught that he had forgotten this admonition and believed the soda had caused his Mother's death. We learned later that Mother had died of cancer but the family refused to tell Henry there was cancer in the family. Today he is acutely suicidal, believing his thoughtfulness about junk food caused his Mother's death.

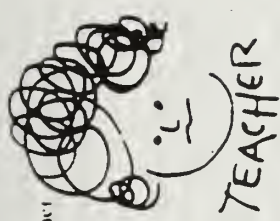
GRIEVING

Normal grief includes both sadness and anger. It is often easier for families, schools, camps,

children's sadness than it is to find times and places they can express their very normal anger. For both children and adults, the death of a loved one can leave feelings of anger at having been abandoned. Such feelings, however, seem selfish and unacceptable. We must let children know that anger is a predictable and acceptable component of grief. Sometimes they like to draw "angry" pictures showing how they are feeling. Other times they may welcome an invitation to hit a pillow or scream or talk about how mad they are about what has happened.

A child's or adolescent's specific style of grieving will depend on such things as that child's age, his/her relationship to the person who died, and the suddenness of the death. One might expect that an anticipated death, which has allowed some time for grieving prior to the death, will create less grief than one that is sudden and unexpected. While that is sometimes true, there is usually still quite a bit of grieving to be done when the death actually occurs.

The grieving of young children (especially preschoolers) can be mischievous, monstrous, and oppressive.



When 3 year old Maria's father died, her preschool teacher had to share this news with the other youngsters in the group. I asked one of the parents asked how the child then had dealt with this tragedy. They were helpful. They let each other and you should have seen 'Johnny'! He came right up to me and said "You leave up my heart. Your eyes are ugly. You're ugly and your teeth are ugly. You are the ugliest teacher I have ever seen." Johnny was not being rude. He was just trying, in his own way, to get even with the adult who told him that the father of a child his own age could die.

Children, like other family members, can grieve in a way that seems "out of sync" with others in the family.



Following her 14 year old son's death, his Mother expressed her dismay that 12 year old Pete

asked to go to his Uncle Eugene game on the afternoon of the funeral. That night he asked for his brother's bed, back, and a casket. His mother feared that she had raised a creep, who didn't even care about his deceased brother. With some help, Pete was able to say that he needed to see his friends at the game, none of whom had been allowed to come to his house for the last three days for fear they would catch a death. He explained his respect for his brother's possessions. I just wanted something to remember him by. Of course, said his Mother, but not on the day of the funeral. "Yes," said Pete, "on the day of the funeral. I couldn't wait any longer."

It is useful before answering children's questions to ask them what they think caused a death. This will give you a chance to correct any misconceptions about which they are so often so much "certain."

Some children who have experienced the death of a family member or close friend appear not to be grieving. They go about their business as if nothing has happened. They may not have cried, though it seems like they should have. There can be many reasons for this. We have raised a society of youngsters who believe, for the most part, that "big boys don't cry."

Teenagers often do their grieving with friends their own age, rather than with their families, but it is important to let adolescents know you are there for them if they want to talk. Each individual will grieve in his own way and at his own time if we make that possible. We must be careful not to convey the message that there is only one "right way."

Normal acute grief for adults - reaching the point where one can say that the world will not be the same but I think I want to go on - can take 2-3 years. For children, grieving lasts longer. Although they grieve in short spurts, most will still be actively grieving through adolescence.

COMMEMORATING

When a friend or a family member dies, children and adolescents must find some way to formally or informally

remember him/her. Such activity confirms the reality of the death and the value of life. It is important that young people be included in planning for commemoration.

Often one of the early commemoration issues is whether or not young children should participate in the various rituals such as the wake, the funeral, the burial, or sitting shiva. Try to discuss these questions with the child. Find out what will be going on, who will be there, what the place will look like, and what will be expected of the child. Be sure to find out ahead of time whether the parent will be open or



closed and share this information with the child. Most youngsters will then be able to tell you whether they would like to go to the various rituals or whether they would prefer to be with a friend or relative during that time. Children who do want to be involved can be given a choice about driving by the funeral home so they will know where the adults are going in and signing the guest book, going in the room where the casket is, or going up to the casket. There are a number of ways in which they can participate if they wish. One of the principal needs of many adults is that they were not allowed a child to go to the funeral of a beloved parent or parent-in-law or relative because they were "too young." There is a strong sense of having missed out on an important family event. Our experience is that children do fine with these rituals if the adults are comfortable about them.

When young children want to participate in a wake or calling hours, it is appropriate to ask the funeral director for permission to bring the child at non-public times. This will make it easier for the family to deal with the child's questions without having to worry about what others think of the child's being there. Someone can then take the child home and the adults can participate in the usual rituals. If a young child will be attending a funeral service, it is helpful to bring along a neighbor or friend who can leave the service early with the child if he/she puts it off.

There are almost 150 other children who died before we were born and who they have met at the

funeral home. We would like to take the child to the funeral home, possibly possible.

to the funeral home, possibly possible.

to the funeral home, possibly possible.

to the funeral home, possibly possible.

to the funeral home, possibly possible.

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her total savings. "Please help me put these in my Daddy's pocket," she said to the funeral director. "I want him to have money so he can buy something in God's store when he gets to Heaven." Carrie may not remember her participation in her father's wake and funeral, but others will be able to tell her about her very touching ways of saying goodbye.

Intentional commemoration, or remembering, may mean having a picture of the person who died or some memento that has special meaning. Children and adolescents have wonderful ideas about things they would like to do individually or as a group to commemorate a special person. They may want to name a star, plant a tree, collect money for medical research, purchase books for a school library, or buy balloons. It is important to help children commemorate a life that has ended as we knew it.

GOING ON

When children and adolescents have accomplished the tasks of understanding, grieving, and commemorating, they often

need specific permission - spoken out loud - to "go on." It is difficult to know when one's return to normal activities may seem untimely or offensive to other family members or friends of the person who died. When is it all right not to go to the cemetery so often? When is it proper to laugh again, to have fun, or to go to parties?

Go on needs to be dithered out from "forgetting" and from the criticism that can seem to be implied in such a description. In describing children's reactions to the death of a bird, an author says that every day, until they forgot, they went and sang songs to their little dead bird. It seems most likely that they did not "forget," instead, they were ready to go on, having done their understanding, grieving, and their commemorating.

Adults need to be sensitive to anniversaries of a death (specific dates, events, seasons, etc.) can be experienced by children as anniversaries) and to the needs of young members to remember their friends and family members at those times.

FOR ADDITIONAL INFORMATION

The Good Grief Program
Judge Baker Children's Center
 295 Longwood Avenue
 Boston, Massachusetts 02115
 (617) 232-8190

International Star Registry
 1821 Willow Road
 Northfield, Illinois 60093
 1 (800) 282-3333

National Center for Death Education
 656 Beacon Street
 Boston, Massachusetts 02215
 (617) 536-0194

National Funeral Director's Association
 11121 W. Oklahoma Avenue
 Milwaukee, Wisconsin 53227
 (414) 541-2500

to *Support children and adolescents who are*
 Remember that noise and activity prove that one
 is very much alive. **Provide an environment**
 where grieving is safe and accepted. Talk specifi-
 cally about the appropriateness of sadness, and
 anger. Share your own grief with youngsters,
 being sure they know they have not caused you
 tears or your anger.

to *Remember the person who died and help children*
and adolescents put to rest in that commitment
 to. Young people can often make suggestions
 about the content of a funeral or memorial ser-
 vice, about flowers, and about what to do with
 particular belongings of the person who died.
 Commemorative activities may go on over a
 period of time.

to *Use two highly moments to begin or continue a*
 program to help children and adolescents learn
 about death and dying. Daily activities and more



dramatic life events
 provide many oppor-
 tunities to talk with
 youngsters about
 death and dying and
 about grief and loss.
 Children ask about
 ceremonies and funeral
 processions. They study
 and comment on dead birds and bugs. As they
 reach school age, many opportunities for discus-
 sion arise in the existing curriculum: selections
 from assigned and independent readings (thea-
 trical endings of life as well as beginnings
 of new life); discussions of the relationship of
 life and death; and discussions of death and
 dying (social studies).

Lyrics from popular music
 dealing with death and dying (the story of
 the impact of war on families (the story of
 artistic portrayals of death and grief (art), and
 such. They hear on the news about tragic deaths
 from child abuse, about plane crashes, or about
 military accidents. Young people may raise ques-
 tions for which we have no answers. It is perfectly
 acceptable to say that their questions are good
 ones and we will try to help find out the answer.
 Don't avoid hearing questions and concerns just
 because you are afraid you will not know the
 answer.

When a youngster seems unable to "go on," it is use-
 ful to review the tasks in reverse order. Is the child
 having trouble going on because he or she has not
 been able to commemorate? Are they unable to
 commemorate because they have found it difficult
 to grieve? Has grieving been complicated by their
 inability to understand? If one can determine
 where a child is "stuck," it is often possible to help
 youngsters move forward with their grief so that they
 can grieve.

WAYS ADULTS CAN HELP BEREAVED CHILDREN

Recognize your own feelings. Think about your
 own experiences with loss, separation, and
 death. They may well have an impact on your
 comfort in helping children and adolescents with
 their grief.

Share the fact of the death. Provide age-
 appropriate information about what happened
 and what rituals will occur. Be aware of the four
 psychological tasks youngsters must accomplish
 if their grief is to be good grief.

Be aware of ways that make a specific child
vulnerable. These include such things as too
 many recent losses, knowing someone with the
 same illness, being the best friend of a worst
 enemy of the person who died, or having had
 some actual responsibility for the death. A
 prompt referral to a mental health center or
 professional for preventive services may be a
 good idea.

to *Address the child's fears and fantasies.* Be
 particularly aware of those that grow out of magi-
 cal thinking and reflect an inappropriate sense of
 responsibility for the death.

to *Discuss issues specific to the situation.* Every
 death is unique and raises specific issues. Chil-
 dren may want to talk about an illness, about
 violence or suicide, about alcohol, and drug use,
 or about troubled adults who hurt children. They
 may want to know about wakes and funerals,
 about cremation and burial, or about ethnic and
 religious differences in death customs.

SELECTED BOOKS ABOUT DEATH AND DYING FOR CHILDREN AND ADOLESCENTS

Adults who are concerned about a child or adolescent who is dealing with loss and bereavement may find it helpful to share a book with that young person. Be sure to read it yourself first and to be available to share and discuss the book with the youngster.

For Preschoolers

- Good-bye, Good-bye* by Susan Beckett. New York: NY Walker, 1974.
- The Good-bye Book* by Margaret Wise Brown. Boston, MA: Addison-Wesley, 1965.

For Elementary Schoolers

- Buddie, Me, and Mortality* by Barbara Pomeroy. New York, NY: Thomas of America, 1979.
- Good-bye, Good-bye* by Margaret Wise Brown. Boston, MA: Addison-Wesley, 1965.

- Charlotte's Web* by E. B. White. New York, NY: Harper, 1952.
- I Had a Friend Named Peter* by James C. Galt. New York, NY: Morrow, 1987.

- It's About You, Mr. Harper* by Norman Stiles. New York, NY: Random House Children's, 1984.
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- It's About You, Mr. Harper* by Norman Stiles. New York, NY: Random House Children's, 1984.

For Middle Schoolers

- Annie and the Old One* by Miska Miles. Boston, MA: Atlantic Little Brown, 1971.
- Daddy Was My Friend* by Andrea Flack Clardy. New York, NY: Human Sciences Press, 1984.
- Forever Friends* by Candy Dawson Boyd. New York, NY: Puffin, 1985.
- Mama's Going to Buy You a Mockingbird* by Jean Little. Ontario, Canada: Viking Kestrel, 1984.
- Mr. Gumbel's Dead Today* by Jean Fawcett. New York, NY: Human Sciences Press, 1983.
- The Rose Beyond the Hill* by Kristi D. Hall. New York, NY: Atheneum, 1985.
- Scar* by Arnold Dobrin. New York, NY: Four Winds, 1971.
- Understanding AIDS* by Ethan Lerner. M.D. Minneapolis, MN: Lerner, 1987.
- When a Parent is Very Sick* by Edna L. Shan. Boston, MA: Little Brown, 1986.
- For High Schoolers*
 - Death by Richard Graber*. New York: Harper & Row, 1986.
 - Face at the Edge of the World* by Eve Bunting. New York, NY: Clarion, 1985.
 - How It Feels When a Parent Dies* by Jill Kuenzler. New York, NY: Knopf, 1983.
 - Learning to Say Goodbye* by When a Parent Dies by Edna L. Shan. New York, NY: Avon, 1976.
 - Living Someone You Love* by When a Brother or Sister Dies by Elizabeth Richter. New York, NY: Putnam, 1986.
 - Making It* by Barbara Cooney. Boston, MA: Little Brown, 1981.
 - Teen Suicide: A Book for Friends, Family, and Classmates* by Janet Kitchman and Sandra Handwerk. Minneapolis, MN: Lerner, 1986.
 - Tiger Eyes* by Judy Blume. Scarsdale, NY: Bradbury, 1981.

For additional books see *Books and Films on Death and Dying for Children and Adolescents: An Annotated Bibliography* Edited by Eva Murphy. Boston, MA: The Good-bye Program, 1985 and First Supplement, 1988.

MADD

HELPING CHILDREN COPE WITH DEATH

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Infants & Toddlers • Age 4 to 6 • Age 7 to 11 • Adolescents (Age 12-16)
Things Not to Do • Suggestions for Helping • Taking Care of the Caretaker • Book Suggestions

How do children experience the death of someone they love?

Do they experience the sadness that adults feel?

What can children understand about death?

These are common questions caretakers face when helping children face the death of a loved one. Successful grieving following an untimely and violent death is an extremely difficult task for adults and for children. Most difficult, perhaps, is coming to grips with the fact that danger and irresponsibility lurk in the world and it cannot be controlled. It would be nice to try to convince our children that life is fair and just, but that's just not true. Adults and children alike must recognize the fact that ugly and painful things do happen. It is impossible to live without hurting.

Even though they know living involves pain, loving caretakers don't want the children to hurt. They find it difficult to talk with children about death because they want to protect them from unnecessary pain. But adults cannot experience grief over the death of someone close without the children sensing that something is wrong. Young children view adults as all-powerful, all-knowing beings, who can do anything. Adult "truths" become permanently etched in their minds.

To tell children half-truths or fairy tales about death, in an effort to protect, may actually do them harm. Children in our culture are exposed to death regularly on television and in the movies, and will need continuing communication with adults to understand how this particular death is different. Children, like adults, differ widely in their reactions to death.

Telling a child about the death is the beginning rather than the end of a long process of sharing. Children have mental structures that differ from those of adults. Children are not miniature adults. They have their own distinct ways of determining reality and of viewing the world. Understanding how children at various ages perceive death may help caretakers to cope with this task.

Children's concepts of death are influenced by many things. Age, religious beliefs, cultural or ethnic values and their relationship to the deceased person are important factors that affect their understanding of death. The reactions of surviving caretakers are the most important factor, however, in determining how children cope with death.

Infants and Toddlers

Even infants can sense that something is wrong as they experience the grief of their primary caretaker. Although a death in the family other than that of the mother may generally affect an infant, the absence of the mother may cause a clear biological reaction. Even that, however, may be remedied in a period of time if another primary caretaker is assigned immediately. Infants should not be passed from caretaker to caretaker.

An older infant will grieve for the lost relationship through anger, crying, searching, lack of appetite, and finally, quiet resignation. His grief is bound up in his complete dependence for life support and in his security. He is just beginning to see himself as a separate person from the mother or major caretaker, and that separation can be frightening.

A child often senses loss and suffers the feelings that go with loss, but she cannot comprehend what death is. The child will pick up on the grief and anxiety in her surroundings and will need significant touch and holding. Explanations of death, however, will not be understood. The child this young can only experience that someone is present or absent.

What one does is far more important to the child this young than what one says. Generally, a grieving infant or toddler needs large doses of tender loving care - holding, cuddling, and stroking.

Ages Four to Six

Like infants and toddlers, children this age have a great need for physical nurturing and the security of knowing who will care for them. They are learning to express themselves orally but do so most effectively through play. Although significant events such as birthdays, holidays, and the first day of school are major milestones to young children, they tend to have a poor concept of time and space.

"Magical thinking" is an important characteristic of four to six-year-olds. A child may fly to the moon, defeat monsters, and cook supper for a hundred guests in the course of a few minutes of play. A child in this age group is capable of a nearly endless variety of fantasies. However, most fantasies are based on something the child has actually seen or heard, even though it may have been misunderstood.

Bereaved children in this age group have a limited and literal understanding of death. Their thinking is concrete. A child this age believes that if anything is active, it is alive. A wind-up toy seems alive when it moves, and the child may cry when it stops performing. A stuffed animal seems alive during play because it has assumed life-like characteristics. A limited concept of time added to a limited concept of death means that when a loved one dies, the child may expect the deceased to be alive again soon. A child may accept news of the death in a matter-of-fact manner and may speak of the death or the deceased person in the same detached way he or she speaks of a playmate or pet. If the dead loved one was a parent or caretaker, the child's primary worry will be about who will now take care of him. The child may cry because he is confused about disruptions in the household or the reactions of others, rather than the death itself. Abstract concepts such as "life after death" are beyond his thinking ability.

In an effort to understand what has happened, young children will ask all kinds of questions - sometime quite alarming to adults. Questions children have asked include, "How will Daddy go to the bathroom?" "How will we open our Christmas presents at the cemetery?" "When will Grandma come play with me again?" "How will Nathan know when it's time to go to school?" No matter how appropriately the news of the death is handled, young children will continue to ask questions and make observations that will startle adult caretakers. Still, they require a response.

Children in this age group may engage in compulsive retelling of the traumatic event as they understand it in an effort to gain some mastery over it. They may unexpectedly blurt out to a caretaker or even a total stranger some aspect of the trauma like, "My Aunt Karen was killed by a drunk driver and my Mommy sometimes." Although these statements can be quite unexpected, they offer a good opportunity to gently

probe into the child's feelings and discern the purpose of the announcement. It may be that the child only needed the sense of mastery that comes with verbalizing an event, or it is possible that there is some underlying feeling or question that needs to be addressed. For a child in this age range, death may be explained in physical terms. Because thinking is very literal and bodily oriented, death may be best explained as follows: "His heart stopped beating and no one can make it start up again. Therefore, we will be seeing him move or talk any more. We will bury his body in the ground because he is not able to do say anything any more."

Children will often note the discrepancy between burial of the body and descriptions of "going away" or "going to Heaven." While the young child probably can't grasp the concept, you might address the distinction as "The part that we loved -the part that smiled, and laughed, and loved us -is the part that has gone to Heaven. The old, broken body is what is now in the ground. People may get new bodies when they get to Heaven."

The brother and sister of a six-year-old boy were killed in a drunk driving crash. For months after, his parents or police would find the child lying on the highway trying to be hit so he could go be with his siblings. At six, the child still had difficulty separating fact from the mystical. His mind could have more easily accepted a description of how the crash caused his siblings to die and why their bodies had to be buried rather than the well-meaning but confusing presentation that his brother and sister now lived in Heaven.

Only if the deceased person is significant to the child, such as parent, grandparent, or sibling, will the child feel extreme and long-lasting sadness for the loss. The sadness may relate to abandonment. The child may conclude that her loved one departed because she was bad. Her understanding of morality is generally that bad behaviors are punished and good behaviors are rewarded. It is helpful to point out over and over again that the loved one did not choose to leave and abandon the child, but that there was a specific cause of

To demonstrate their increased need to be cared for, bereaved children may regress back to previously mastered behaviors such as bed wetting and fear of separation. Young children will act out their fear and confusion through play and should not be discouraged from doing so. Caretakers can facilitate therapeutic play by sitting with the child as she plays with dolls, stuffed animals, puppets, toy cars, and doll houses. Sometimes monsters become concrete substitutes for death. Ask questions about the play and ask how various dolls or stuffed animals feel. Look for aggression in play and explore where the anger is focused.

Because of their very short attention span, young bereaved children will be unable to focus on their feelings for extended periods of time, especially feelings they cannot articulate. A bereaved child may ask questions about the death one minute then play quite happily the next. Caretakers must realize that periods of play do not mean the child has come to terms with the loss, but are expressions of that loss or respites from their feelings.

Ages Seven to Eleven

Children ages seven to eleven are still primarily oriented to the family, although they have begun to relate to and gain self-identity from their peers. Play is still a mode of self-expression, although children this age also express themselves quite well orally, especially the primary feelings of mad, glad, sad. They have begun to grasp more abstract concepts such as truth, time, space, and death, although magical thinking still plays a role.

Around the ages of seven or eight, the child attributes life to movement in nature, although not so much inanimate objects like toys. A cloud is alive as it blows across the sky. Water is alive when it gurgles as it runs in a stream.

Most commonly, seven or eight year olds become fearful of death because they realize for the first time it is real. No matter who dies, they may feel devastated at the thought of losing a parent. Obviously, the

death of a parent is extremely traumatic at this age. Some of their questions may indicate fears of their death. Death is seen as an attacker who takes life.

Although able to accept the finality of death, many of the factors of early childhood still apply. It is important for children of this age to express their sadness, anger, fear, and guilt.

Because they now understand that people die, they may become interested in what happens after death. They begin to relate to some of the mysteries of life, they are able to relate to some of the mysteries of death. However, they are not ready for many answers.

The child of this age is concerned not only about death as a concept, but about the "mechanisms" of death. He may ask questions about why the person died or seek information about who or what "caused" the death. He will then direct anger toward the someone or something that caused it. In the case of car crashes, it is best to help the child focus his anger on the person responsible so that he does not have to search for other acceptable causes. A child may not know what "drunk driver" means. Show him that only a half a can of beer would make him sick, dizzy, and unable to stand or walk straight if he drank it. Explain how beer and other drugs differ from milk or juice. Explain that it takes more to intoxicate an adult, then show him a how many cans the drunk driver had and explain how the driver's ability to see and drive were diminished by the alcohol or other drugs. A film from the library or your local MADD chapter may help. Focus on one component of the crash at a time for young children. Following a discussion of the above is not a good time to talk about what happened to the victim's body.

Although most children this age can easily express glad, mad, and sad, their magical thinking may also lead to guilt feelings regarding their role in the death. Almost all children at sometime or another wish to eliminate their parents and siblings and may even dream of different ways to do it.

The child in this age group may believe that his "death wish" actually caused the death! Even bereaved adults sometimes feel this way. But children are much more susceptible to guilt feelings than adults or adolescents, since children cannot call upon their intellectual resources to persuade themselves of their innocence. Free expression of grief should be encouraged, and children must be told over and over that they did not cause the death and that the dead person did not choose to die. The child of this age may also feel that death is a punishment for improper behavior. He may fear that his naughty behavior has brought about the death of a loved one, and that he is likely to be punished for it. He may also believe that he or another loved one will be the next to die. Because the child simply cannot understand death in the intellectual level of adults, it is difficult to rid himself of feelings of anger, fear, and guilt.

It is not unusual for a child in this age category to feel some shame regarding the death of a loved one. The child likely feels very different from younger children and may resist questions that relate to the death such as "What do your parents do for a living?" if a parent has died, or, "How many brothers and sisters do you have?," if a sibling has died. Shame and confusion overtake reality.

A more adult concept of life and death develops roughly between the ages of nine and eleven. At this developmental level, the child has learned that only people, plants, and animals live and die. He can no longer think abstractly, but still does not have clarity about meanings and values. He only knows that something has happened which cannot be explained or understood.

A child of this age is not only sensitive to his own feelings, but can now enter into the feelings of others. As a result, he is more understanding of what the loss may mean to others. In short, he is able to empathize. A child in the upper end of this range not only needs support and comfort, but can be a source of support and comfort for others. Opportunities to be helpful to others during the crisis can actually help the child deal with his own feelings.

Adolescents (Ages twelve to sixteen)

As girls tend to mature faster, they may be considered an early adolescent in the ten to twelve age range.

range, whereas boys arrive a year or two later. The adolescent is on the threshold of independence. She is in an intense world of self discovery and is primarily concerned with life, identity, status, and peer pressure. She is tightly bonded with peers and begins to disengage from her family. She has developed adult-like concepts of attributing life appropriately but often faces her own social and emotional immaturity. According to child development experts, if the child experienced security and healthy development from birth to three, she is apt to make fairly untroubled movement into adolescence. If, however, the early years were fraught with uncertainty, conflict, and lack of trust, adolescence may be stormy.

The young adolescent often rejects his parents' standards. Therefore, when a parent dies, he may experience an extreme internalization of guilt. It is normal for a teen to be pulling away from home ties, but he feels guilty for having done so when a parent or sibling dies. The adolescent's school performance will likely reflect the stress and trauma that accompanies a sudden and violent death. While academic expectations should not be relaxed for the bereaved child, he may need extra tutoring, a less demanding schedule, or some other assistance from the school. Teachers and school officials should always be notified of a death within the family, regardless of the age of the child. School personnel are in a unique position to monitor the child's response to the death both academically and socially, and to offer special services as needed. Many school counselors are also trained to identify and respond to behavior problems in school that may be grief-related.

The mid-adolescent, fourteen through sixteen, has achieved a stronger self-identity. She does not accept peers without question and has learned to compare their values with hers. She is not as self-centered as she may have been earlier, although she may still turn thoughts toward her own death as she is faced with the death of another.

Death is foreign to the emotionally healthy adolescent. It is something he simply does not want to think about. At best, most adolescents are insecure. Sometimes their self-destructive behaviors, such as alcohol and drug abuse and playing chicken in an automobile, are means of saying, "I'm not afraid of death - I make something out of it." But the real meaning beneath it may be, "I'm so afraid of death that I am trying to control my fear and insecurity by making it a game." Moving fast and keeping the music loud can be an escape from having to face the fears.

When met with the loss of an important relationship, the adolescent's self-centered values may cause her great fear, guilt, anxiety, and anger. She feels that no one has felt the deep and powerful feelings she now feels. No one has ever loved as she loves, or grieved as she grieves.

Adolescents have the capacity for empathy with other grievers, so their pain is doubled. They may express their rage by a general increase in aggressive behavior. They may also have intense revenge fantasies and must be helped to differentiate between thoughts, feelings, and behaviors. Adolescents should be told that while feelings simply exist, how one responds to those feelings can be right or wrong. Help the teen find appropriate ways to express anger and rage.

Because an adolescent forms more intimate relationships with her peers than with parents, it is advisable that networks or groups be made available for adolescents who have experienced the death of a loved one. The adolescent may respond well to another adult willing to listen and assume a surrogate parent role with her. While reluctant to participate with her own family in grief or support groups, she may respond well to a pastor, school counselor, or another adolescent who "understands." Caretakers of a grieving adolescent should not be discouraged if their teen reaches out to someone other than family. That is normal for this stage of development. Some kind of family intervention may be necessary, however, if the adolescent's response is destructive to the family unit.

Some Things Not To Do

There are a number of explanations of death which, though well-intentioned, cause children to experience more confusion, doubt, guilt, and fear than understanding. These statements should

be avoided.

1. **"Your Daddy has gone away for a very long time."** Without further explanation, the child will interpret such a statement as desertion. She will go on to view the desertion as punishment and with strong feelings of guilt and resentment. She must know that the deceased has not chosen to away.
2. **"Mommy is now in Heaven."** Heaven is difficult for a young child to understand when, in fact, child knows that the body is buried in the cemetery. A child under the age of seven or eight will have a difficult time understanding the concept of Heaven. It is wisest to explain death in terms of a lack of ability to function.
3. **"It was God's will."** This statement can cause a child to be extremely angry at God and to question God's goodness and love just at the time when the child needs all the support possible. It is better to explain that it was probably God's will for the loved one to live a full and happy life. However, someone was irresponsible and caused the death to happen before anyone else was ready.
4. **"He died because he got sick."** This seems like an acceptable explanation on the surface, and without further explanation, the child may assume that everyone who gets sick dies. Therefore, the child may become extremely fearful of any kind of illness. Likewise, saying that "He went to the hospital and died," can make it easy for the child to conclude that hospitals make people die.
5. **"To die is to go to sleep."** This is easy to say to a child without considering the repercussions. She is very likely to develop sleeping problems, fearful of his or her own death. A clear distinction should be made between sleep and death.
6. **"Let's send you for a visit with Aunt Susie."** Sending the child off to be with other relatives or friends during the crisis makes her adjustment more difficult. It is best not to spare her the reality of what is going on.

A parent should not deprive the child of learning that she can tolerate the experience -that she can experience a loss, be saddened by it, and still not "go under" because of it. However, children must be in the knowledge that they will be cared for. Therefore, the child might stay with someone else for a while if the primary caretaker is temporarily unable to communicate the message of security.

Suggestions For Helping Children Cope

1. Respond to the child's feelings. Obviously the younger the child, the less ability he has to verbally express feelings. However, the caretaker should give the child plenty of attention and do a lot of touching, holding, and stroking to help the child feel secure. The child who is older and more verbal should be encouraged to talk about his feelings and fears. His grief and anger should be accepted. Anger might be acted out in physically appropriate ways such as punching a pillow, stuffing newspapers in a trash bag, or running outside. Ask the child how the activity felt. The best way for a child to become comfortable talking about his feelings is for the caretaker to be comfortable talking about his own feelings.
2. Reassure the child as she brings up fears. Many of her fears will be irrational, but perhaps they can be understood in terms of her development. Only as the caretaker understands the child's developmental level can he or she effectively address the child's needs. Responses to fear should be direct, simple and clear, accompanied by touching and holding. The child can usually accept explanations when he knows there is adequate support from the adult doing the explaining.
3. Spend time in play with the child under the age of ten. Children often communicate their deepest feelings through actions. It is best, therefore, to respond to their feelings with actions. After the first few weeks following the death, the caretaker should take time to sit down and play with the child, guiding the play, but allowing the child to express whatever he or she wants through toys. Responses should affirm what the child is doing. "Your doll got angry when his Daddy left." "Your doll is crying in the bed. What is she sad about?"
4. Understand the importance of missed events. If Dad had been teaching his son how to cast a line or how to pitch a tent, and then died, this may be the focus of much of the child's concern. It may seem that he is more upset over fishing and camping than over the loss of his father. This is not the case.

- but it is the way young children are more able to express loss. The child needs sympathy and support for the feelings and not criticism or rejection because of the manner in which they are expressed.
5. While sharing as much of the family crisis as possible, do protect the child from witnessing an emotional collapse on the part of one on whom he depends. He can usually handle feelings of so loneliness, and anger, but to witness an emotional collapse will bring on unnecessary anxiety and insecurity. Ask the child how he feels about your sadness. This will help him with his own.
 6. Help the child understand that physical death, in itself, does not hurt. The family is crying because they hurt inside. The sadness comes from the fact that a relationship that meant much to everyone now has been lost.
 7. Allow the child old enough to sit still the opportunity to attend the funeral or memorial service. Confronts the child with the reality that death has occurred and helps her acknowledge her loss. A child of this age should be given time prior to the funeral to view the body and say good-bye in her own way. When allowed to do so, she will find her place as an important member of the group of mourners. The child should be given a detailed explanation of what to expect at the funeral. Perhaps she will want to visit for a time with the funeral home director who can answer her questions. Although the child should be encouraged to attend the funeral, she should never be forced. Like the child should never be forced to kiss or touch the deceased, although it is perfectly all right if she wants to. The irrational fears some adults hold about funerals and the rituals surrounding death can often be traced back to a childhood incident when they were forced to touch or kiss the body of a deceased person. If the funeral has now passed, and children were not allowed to participate, it is too late to remedy the situation. Ask a trusted clergy person or the funeral director to conduct a simple memorial service just for children. Invite all the children who might like to come. Perhaps hold it at the grave site and take a photo of the loved one who died. Ask for special memories to be shared. Be prepared to answer lots of questions.
 8. Understand and accept if the child substitutes feelings he can handle for those he can't. He may giggle or laugh at things that are not funny. The wise caretaker will understand this behavior and not condemn the child for coping in the best way he knows how.
 9. Allow the child to share experiences of memorial observances and visits to the cemetery. Going to the cemetery works against avoidance, denial, and repression of painful feelings. The sadness felt in place may help the child move on through his grief. It may be important for children to take flowers, letters, or other gifts to the cemetery. They need concrete ways of expressing themselves. Also, do not be surprised if they play or run through the cemetery. Children can't maintain grieving over an extended period of time.
 10. Don't be afraid of tears and don't be in a hurry to stop the flow of tears when they start. It is natural and normal for children to wash away grief with tears.
 11. Talk about the death when the child wants to talk about it. There is little to be gained in answering questions that are not asked. Answers should be both honest and adequate for the question asked depending on the child's development level. Like adults, children may experience a great deal of ambivalence about the finality of death. Children may insist that their loved one is alive or that their loved one was seen breathing or opening their eyes in the casket.
 12. Encourage the child to write a good-bye letter to the deceased. If this is done prior to the burial and placed in the casket with the body, it will be most reassuring to the child. If this is not possible, encourage the child to write the letter anyway. It will help her be able to express feelings and enable her grief process. It can still be taken to the cemetery and buried or placed with a flower arrangement.
 13. Explore meaningful ways to memorialize the loved one. Children may want objects, clothing, or a photograph of the loved one. Don't worry if children take these objects to bed with them.
 14. Like you, children will be especially aware of the absent loved one around holidays and will want to find ways to include the deceased in the festivities. Young children especially mark time by the passage of holidays. You may not feel much like celebrating Passover or lighting fireworks but the maintenance of tradition is important. Nevertheless, even young children will understand that things have changed and may have some ideas of ways to do things differently if following family traditions will be too painful.
 15. Make up games that begin with "Remember when" or, "Do you remember" to facilitate expression.

feelings.

16. Reinforce the fact to Young children that their loved one did not choose to die. In life, people are given choices, and some make bad choices, such as using alcohol or other drugs and then driving. These choices can hurt and kill other people. It is no one's fault except the person who made the choice.
17. Remember that no matter how comfortable a child becomes with an age appropriate explanation of the death, he will reprocess the experience and his feelings about it at each developmental level, into adulthood. As a child matures, he will need additional information about the deceased and the circumstances surrounding the death. He will need additional time, space, and opportunity to grieve and grow. Loss is a necessary component of living.

Lessons in grieving and surviving are important gifts you can give the child in your life. Much of what a child learns about death and bereavement now will stay with him throughout his life. If you have questions or concerns, call a child bereavement center, your local MADD chapter, your child's guidance counselor, school, or a mental health professional. Many hospital social work departments can refer you to appropriate programs or professionals. The funeral director, local hospice, and clergy are also good resources.

Taking Care of the Caretaker

Caring for a bereaved child is painful and time-consuming. Realize that you, too, are moving through various stages of grieving, just like the children. However, you will rarely be at the same place as they are at the same time. Following are a few suggestions.

1. Write down the way you answered a child's question or explained death to him. If kept in a journal, you can later use it as a reference for future discussions.
2. Explain your way of explaining the death to school personnel, extended family, and friends. This can be accomplished through a form letter. If they understand your philosophy, confusing messages to the child can be avoided.
3. Encourage older children to make a photograph album of favorite photos or to keep a journal. This offers an opportunity for unassisted grief work, although the children will want to discuss parts of these projects with you. Make an album for smaller children with notes they will appreciate later (Preparing the album will enable you to grieve, too).
4. Take care of yourself. Attend victim support groups, write your own journal, seek professional counseling for a while. The best thing you can do for a bereaved child is to deal with your own bereavement in as healthy a way as possible. MADD may be able to assist you or suggest appropriate referrals.

Books to Read

For Caregivers

- Grollman, Earl A. (1990), *Talking About Death, A Dialogue Between Parent and Child*, Beacon Press
- Grollman, Earl A. (1967), *Explaining Death to Children*, Random House
- Ross, Elisabeth Kubler-Ross (1983), *On Children and Death*, Macmillan.
- Schaefer, Dan & Lyons, Christine (1986), *How Do We Tell the Children?*, Newmarket Press.

For Children and Teens

- Buscaglia, Leo (1982) *The Fall of Freddie the Leaf* (elementary age), Holt, Henry & Company.
- Carrick, Carol (1976), *The Accident*, Houghton/Mifflin.
- Clardy, Andrea F. (1984), *Dusty Was My Friend* (elementary age), Human Sciences Press.
- Exupery, Antoine de Saint (1982), *The Little Prince*, Harcourt, Brace, Jovanovich.

- Green, Phyllis (1978), *A New Mother for Martha* (elementary age), Human Sciences Press.
- Grollman, Earl (1993), *Straight Talk About Death for Teenagers: How to Cope with Losing Someone Love* (teens), Beacon Press
- Heegaard, Marge (1988), *When Someone Very Special Dies* (small children), Woodland Press.
- Heegaard, Marge (1991), *When Something Terrible Happens* (small children), Woodland Press.
- Johnson, Joy & Mary (1978), *Tell Me, Papa*, Centering Corporation.
- Kremetz, Jill (1986), *How It Feel When a Parent Dies* (older children), Alfred A. Knoph.
- Linn, Erin (1952), *Children Are Not Paper Dolls*, The Publishers Mark.
- Melonie, Bryan and Ingpen, Robert (1983), *Lifetimes* (small children), Bantam Books.
- Morgan, John (1990), *The Dying and The Bereaved Teenager*, The Charles Press.
- Paulus, Trina (1991), *Hope for the Flowers*, Paulist Press.
- Powell, E. Sandy (1990), *Geranium Morning* (elementary age), Carol-Rhoda Books.
- Richter, Elizabeth (1986), *Losing Someone You Love: When a Brother or Sister Dies* (older children), Putnam's Sons.
- Silverstein, Shel (1964), *The Giving Tree*, Harper & Row.
- Traisman, Enid (1992), *Fire in My Heart, Ice in My Veins, (A Journal for Teenagers)*, Centering Corporation.
- Viorst, Judith (1971), *The Tenth Good Thing About Barney*, Macmillan.
- White, E.B. (1952), *Charlotte's Web*, Harper & Row.
- Williams, Margaret (1983), *The Velveteen Rabbit*, Holt, Henry & Co.

HOME PAGE

MADD

FINANCIAL RECOVERY AFTER A DRUNK DRIVING CRASH

by Janice Harris Lord ACSW-LMSW/LPC

National Director, Victim Services

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The financial outlay required when a loved one has been injured or killed can be a second victimization in itself. It is unfair that victims of drunk driving crashes have to pay both emotionally and financially for someone else's malicious or negligent act.

Funeral expenses, medical bills, travel and phone expenses and lost wages may leave the bereaved overwhelmed.

The injured do not have funeral expenses but may incur all the above, need medical equipment, replace of services, ongoing home care services, child care, psychological counseling, and repair or replacement of their vehicle. Loss of wages for the seriously injured can be catastrophic.

Unless numerous and adequate means of financial recovery are available, the death or serious injury of a breadwinner can mean a total alteration of lifestyle.

In order to complete the filing of various claims following a death, at least twelve copies of the death certificate will be required. If a spouse was killed or disabled, copies of the marriage license or certificate, military discharge papers, social security numbers of all family members, and birth certificates of minor children will be needed to collect benefits.

Social Security/Veterans Benefits

These benefits are available to survivors to replace, in part, family earnings lost because of death or permanent injury of a wage earner.

A surviving dependent spouse and/or children will probably be eligible. A small death benefit to assist with funeral expenses is also available to a surviving spouse or eligible minor children. Social Security and, veterans, the Veterans' Administration, should be informed of a death or injury immediately. Veterans can be treated at V.A. Hospitals at no cost. It may be possible to file a claim by phone, but going in person is usually more effective. The nearest Social Security office will be in the phone book. The Veterans' Administration may be notified at Washington, D.C., 20420, or the nearest local VA office.

If the person killed was already drawing Social Security or V.A. and a check written to him or her arrived after the death, it must be returned. If it is made out to the deceased and the surviving spouse jointly, take it to the nearest office and it will be stamped so the surviving spouse can cash it.

In cases of serious injury, it will take some time before a determination about disability benefits can be made.

made. Disability is defined by law as the inability to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment which can be expected to result in disability for at least twelve months. Nevertheless, it is important to inform these agencies as soon as possible if the injury is serious enough that returning to work will not be possible for an extended period of time. Social Security Disability benefits are paid from the date of application for benefits, not from the date of the injury. Most checks usually start with the sixth month of disability.

The initial claim may be denied, but the rate of success goes up with each appeal. If a claim is denied, do not hesitate to ask for Reconsideration followed by a Hearing, then a Review! A final course of appeal is to sue against the Social Security Administration in Federal District Court.

Vocational Rehabilitation Services

Although eligibility criteria vary from State to state, all states have vocational rehabilitation programs for individuals with a disability which results in a substantial handicap to employment and for whom vocational rehabilitation services might be expected to benefit the individual in obtaining employment. Services pay for medical, psychological and vocational evaluation and treatment including hospitalization, surgery and therapy to decrease or remove the disability. Devices such as artificial limb braces and wheelchairs plus training in rehabilitation centers, trade schools, business schools, and colleges or universities enable individuals to learn a trade which compensates for the disability. Most Vocational Rehabilitation Services are located under State Offices in the phone book.

Banks

Your loved one may have had various individual and joint accounts at various banks and institutions. The rules governing when and under what circumstances funds can be withdrawn from such accounts vary widely from state to state and may depend on how a particular account was set up. In the case of accounts only in the name of the deceased, an administrator of the estate may have to be appointed and the account changed to the name of the administrator. If the account is held jointly, the law in many states presumes that the surviving account holder is entitled to the remaining proceeds, at least up to a certain amount, which can vary according to the relationship of the survivor to the deceased.

A safe deposit box in the name of the deceased or jointly with someone else's name may also have to be sealed at the time of death. Requests for access to insurance policies, etc. must be signed and witnessed.

Permanently disabled individuals may be able to begin payouts on IRA's, annuities, and other retirement benefits with proper documentation.

Life and Medical Insurance Policies

The money from a life insurance death benefit, payable to a specific beneficiary, should be immediately and automatically available to the beneficiary. However, delays are not unusual, especially if suicide was even remotely considered as the cause of death.

All policies should be read carefully prior to filing claims. Some life insurance policies include double or triple indemnity benefits if the insured died catastrophically. Many policies include an "incontestability clause" which states that the insurance company cannot dispute the validity of a policy after it has been in force for a specified period of time.

Check everywhere that records of the deceased may have been stored to be sure all policies are located. Contact the family attorney, stockbroker, financial planner, banker, accountant, and employer. Millions of insurance dollars go uncollected every year because no one knew about the policies. In addition to policies related to employment, some unions and professional organizations offer group life and/or health insurance.

to their members. Carefully examine health and hospital policies to be sure you know how to file claim payment of final medical expenses.

After all policies of the deceased have been located and examined, notify each insurance company of the death and request appropriate forms. Then check any other existing policies in which the deceased was named as a beneficiary to change the beneficiary. The names on automobile insurance policies will also need to be changed.

The injured need to notify their own medical insurance and automobile insurance adjusters. That company will contact the liability insurer of the offending driver.

Victims may be eligible for payment of medical expenses by their own medical insurance and liability automobile insurance. Check with each of them or consult an attorney on an hourly fee basis to see how to get the bills paid.

Also check on all policies to see if they contain a "waiver of premiums" benefit which pays the premium for the disabled individual.

Begin immediately to keep a chronological log of all new aspects of the injury as well as all expenses related to the injury including counseling and loss of wages.

If insurance companies delay or refuse to cover expenses, contact the State Board of Insurance in your Capitol. It is also possible to file suit against an insurance company that does not pay according to the law.

Employee Benefits

Sometimes, surviving family members do not know about employer policies because policies are not stored in the home. Question the personnel department of the employer of the victim about all benefits, sick leave, vacation time accrued, and when checks may be expected. If dependents are covered on the health insurance policy, see how long coverage will continue. If coverage does not continue after a certain date, ask if options exist for a continuation policy for dependents. Often, one has only 30 to 90 days to convert into a new policy, so timeliness is important.

If the surviving spouse is employed, his or her own policies should be checked. The deceased may also have been covered by them. After all claims relative to a death are filed, a new beneficiary will have to be named.

Check all health policies to see if mental health counseling is covered in the event it is needed. Get clarification on whether or not vacation time will have to be taken to visit attorneys, to attend court hearings, and the multitude of other matters which must be handled during working hours. Ask if a subpoena will be required in order not to be penalized for attending court.

The injured will need to find out how long their job will wait and how long return-to-work rights continue. They need to learn whether they can get unpaid leave of absence when paid leave expires. They need to know if they may return to a less demanding job if necessary. It is critical to know if insurance premium during the absence will be paid by the victim, the employer, or the insurer. Ask your U.S. senator or representative for information about the Americans with Disabilities Act to assure that you receive all the benefits to which you are entitled.

In order to prevent confusion later, try to get an agreement about all of the above in writing. In some jurisdictions, victim advocates in the police or prosecutor's office will provide employer intervention services upon request.

Creditor Intervention

The unanticipated death or serious injury of a family member nearly always means

that ongoing bills are set aside until immediate expenses are paid. Contacting creditors about the family crisis can be very difficult. A trusted friend or relative will probably be willing to help if asked.

If the person killed or injured was an income producer for the family, check all loan contracts, mortgage and credit card contracts to see if there is a clause which pays the balance in the event of death or incapacitating injury. If there is, notify the creditor immediately and request claim forms.

Next, list all creditors, their addresses, and the amount owed. Then consider the amount remaining after paying immediate expenses. Determine when and how much insurance money is expected as well as ongoing income. (Be cautious about accepting inadequate insurance settlements out of fear of facing creditors.)

From these figures, determine how much, if anything, can be paid on bills in the near future. Write each creditor, explain what has happened, advise regarding how much can now be paid per month, and when payment can be expected. State that you wish to agree to a payment schedule which will fit both yours and the creditor's, and that if you do not hear otherwise, you will assume that the creditor agrees with the plan you have submitted. Following a death, inform creditors that accounts in the name of the deceased now be changed to the surviving spouse's name if the deceased did not have substantial debts charged to cards. If the survivor has not had credit previously, a credit rating on his or her own may need to be established.

In some cases, emergency funds are available for bills. Public utilities such as the electric, gas or water company may extend credit if an application is completed. In the event that a landlord is uncooperative, phone the municipal office and ask for a copy of the City's Landlord-Tenant regulations. Most legal aid services also have summaries of these regulations.

It is to the creditor's advantage to work out payment schedules so he is eventually reimbursed. It is against the law in most states for a creditor to harass or intimidate a debtor. If the creditor refuses to accept the payment plan, write another letter and send a copy to your attorney. If that fails, ask a legal aid service attorney, hired on an hourly rate basis, to intervene.

If a trusted friend or relative is willing, ask him or her to handle all bills as they come in for a while. The bills can seem like another wave of victimization. Decide when you are ready to resume responsibility for your financial affairs.

Automobile Insurance Benefits

Victims should know if they are residing in a "no-fault" or "non no-fault" insurance state

If residing in a no-fault state, costs are covered by the policy of each individual involved in the crash. This holds true even if the driver was driving someone else's vehicle. Check your state insurance code or call your State Insurance Commission at the State Capitol for defined coverage, time, and dollar limits. In addition to death benefits, property benefits, and medical benefits, inquire about use of a rental car, lost wages, replacement costs of services such as child care and housekeeping, mental health counseling benefits, future medical bills, loss of future earning capacity, and past, present and future pain and suffering.

Frequently, no-fault benefits are open-ended in injury cases, paying bills as they are submitted. Others lump sum payments which require detailed anticipated costs and losses. Unfortunately, some insurance companies choose not to pay the bills, requiring the filing of a civil suit. If the insured does not respond to the company's notification of termination of benefits letter, the company has successfully saved money.

In a non no-fault state, if the driver of an automobile was liable for the crash and has liability insurance will be eligible to receive benefits from the liability insurance company. Eligibility will have various conditions based on the insurance laws in each state. If the driver liable for the crash had no liability insurance at the time of the crash, you may be eligible to receive benefits from the uninsured/underinsured

motorist provisions of your own policy. Again, the insurance laws of each state will define that eligibili

Insurance adjusters may approach you soon after the crash. Decisions you make at that time may have far-reaching financial ramifications.

- If you choose to retain a civil attorney, refer all insurance agents, including your own, to your attorney.
- Before speaking with any insurance agent, be sure you know whose company the adjuster represents. If an adjuster comes to your home, ask for a business card. If the adjuster's language is confusing so. Even though you may discuss the case, it is wise not to give signed or recorded statements.
- Be fully competent and aware when discussing the case with an insurance adjuster. Grieving or painful injury can make you feel numb and confused. It can cause you to have poor memory. If you are not able to discuss the case rationally with the adjuster, ask him or her to return at another time. It is a good idea to have a trusted person with you when you discuss insurance.
- You may want to hire an attorney on an hourly basis to evaluate your case before signing an insurance release. These forms release a drunk driving offender or his/her insurance company from future liability. For example, soon after the crash the insurance company may say "We'll leave you this check for \$100,000 today if you'll sign the release." However, the offender may have \$300,000 insurance but YOUR ability to sue both the offender and insurance company is negated once you sign the release.
- Set up an organized file, including copies of crash reports, estimates on repairing or replacing the automobile, medical and funeral bills, and copies of letters having to do with the insurance settlement.
- Get several estimates on damages to the vehicle before settling on property damage. These may be obtained from body shops or automobile dealers. You can negotiate the insurer's offer if you have several estimates.
- Obtain copies of all medical bills before settling on the medical or bodily injury damages. It is very important to know the full extent of injury and prognosis for treatment before making a final settlement. This may take months. Keep a daily record of adverse effects of the crash, including psychological ones. Be sure that when doctors write medical assessments, they understand the victim's job description, employment history, and education in evaluating if when, or under what conditions the victim may return to work.
- Request a copy of each settlement offer in writing to avoid confusion or in the event you receive conflicting information. This does not need to be a formal typewritten letter, but may be handwritten and dated by the person making the offer.
- The adjuster may or may not be able to advise you of your claim rights based on statutory insurance law, since adjusters do not have legal degrees. It is the job of the insurance adjuster to negotiate the best deal possible for the insurance company. Ask for a written copy of claim rights in your state. Know the statute of limitations for personal injury and property damage actions in your state. You may want to consult an attorney on an hourly fee basis for this information. If you feel you are being treated inappropriately by a claims adjuster, contact his or her supervisor. If that is not satisfactory, write a personal and confidential letter to the president of the insurance company explaining what happened. Your State Insurance Commission or State Board of Insurance may also be contacted. Legitimate insurance companies are regulated by a state insurance commission. Contact the switchboard at Your State Capitol for the phone number. All phone or personal communication relative to a complaint should be followed up by a letter.

In many states, insurance companies are required to act in "good faith." In such states this means that if claims are unreasonably denied, if valid claims are not promptly paid, or if victim families are coerced into settling for less than is due them, this behavior may give rise to a cause of action in tort against the insurance company. Punitive damages may also be recovered upon proof of actual malice, fraud, or oppression, usually referred to as "outrageous conduct."

Homeowner's or Renter's Insurance

Your homeowner's or renter's insurance policy will probably cover loss of contents of the car including luggage and purses, including their contents, and damaged clothing worn, subject to deductible. Contact your insurer to learn how to apply. Usually an itemized list of lost or damaged items, age, and approximate purchase price is required.

Civil Suits

If the person responsible for the death or injury of your loved one has substantial income or assets which are recoverable, or if the liability insurance company has failed to offer a fair settlement for a claim, consider filing a wrongful death or personal injury suit.

Civil actions are totally separate from the criminal case. Although the State provides a prosecutor to try criminal case, an attorney for a civil proceeding must be retained. Do not expect either attorney to advise the other suit, although they should be interested in each other's case to enhance their own. Civil actions depend largely on the type and extent of injuries or death inflicted. Recovery of medical, funeral, and property expenses are usually the first to come to mind. Financial recovery is also possible for more remote damages such as past and future wage loss, and past and future pain and suffering. If one spouse is killed or injured, the other spouse can sue for loss of consortium (change in relationship) in some states. Some states also allow for punitive damages -additional money to punish the offender.

If a public entity such as the city, county, or state government was responsible in any way for the death or injury through commission or negligence, financial recovery may be possible from them as well. Traditionally, governments have been immune from civil suits. Referred to as "sovereign immunity challenges," appellate courts in a number of jurisdictions have now found them responsible for such things as inappropriate parole release, inadequate probation supervision, and failure to arrest a drunk driver who later kills someone. However, even in states that do allow you to sue the government, the statutorily designated persons must be notified about the crash within a relatively short time period.

In drunk driving cases, states with "dram shop" statutes or case law allow the drinking establishment that negligently encouraged an intoxicated person to continue drinking to be sued if that person later harms or kills someone.

To pursue any of these sources of financial recovery, you will need to hire a civil attorney. Consider the following as you try to identify the best attorney for your case:

- Shop around. A good recommendation from another victim is often an invaluable piece of information. Interview at least three attorneys before making a decision. As you interview, ask what kind of cases they handle, how they charge, and what they think about your case. Tell them you make the decision to retain them at a later date. Remember, however, that the degree of success an attorney has in pursuing a full and fair settlement of your claim often depends on opening the case at an early stage.
- Look for an attorney who concentrates a significant percentage of the practice on personal injury or wrongful death cases involving drunk drivers. If you use another type of attorney, note when you sign the contract whether additional fees will be required if co-counsel is retained.
- Ask if the attorney has more experience representing plaintiffs or defendants. Ask what percentage of trials he or she has won. Ask what percentage of the cases settle out of court. This will help you analyze how much trial experience the attorney has, which is important.
- Ask for an explanation, in terms you can understand, of negligence laws in your state which relate to your case, including the statute of limitations. Ask for a brief written summary of the merits of the case as the attorney sees it at that point. This will prevent confusion later on. Be skeptical, however, of an attorney who promises certain results. Air-tight cases simply don't exist.
- Be sure you understand the fee schedule. Does the attorney require a retainer fee for investigation? Will the work be done on a contingency basis (paid a percentage of the actual recovery)? If any of the work will be done at an hourly rate? Is a promissory note as security for fees required? If

handling your case on a contingency basis, does the percentage differ if settled out of court, if go to trial, or if going to appeal? Will you be billed for out-of-pocket expenses (court fees, deposition fees) as they occur or will they accumulate until a settlement is reached? If the case is lost, are costs or fees still owed?

- Will expenses be deducted from the settlement before it's split or just from your portion?
- Negotiating on fees, carried forth in honest good faith, is professionally acceptable and legal in states. If percentages are regulated by state law, the attorney should explain the statute to you. If negotiable, you may want to discuss an hourly fee for work on recovery for actual damages and contingency percentage which decreases as the amount of recovery for punitive damages increases. If there is no significant dispute on liability of damages, and only the insurance is recoverable, a contingency fee may result in a high fee for only a few hours work. The attorney may therefore for your insurance recovery on an hourly basis.
- Be sure the employment contract to retain the attorney includes the fee schedule, is complete, specific, and clearly understood before you sign it.
- Ask the attorney for copies of all correspondence relating to your case, and request that he require defendant and/or his insurance company to make all offers for settlement in writing.
- Make sure the contract lays out what you will be liable for if, at a later time, you no longer want services.
- Request that all bills for services be itemized and match them with the fee agreement.
- Ask for a receipt indicating payment and purpose of payment each time you pay your attorney.

If you exercise care in choosing your attorney, you will probably be satisfied with the services. Negligence in civil cases is exceedingly complex and open to a variety of interpretations. This discussion can in no way provide information sufficient to understand the intricacies of your particular case. Only your attorney can do that. Sometimes it is impossible for attorneys to give clear and concise opinions about cases.

If you become dissatisfied with the services your attorney is providing, the attorney should be told of the dissatisfaction. If a satisfactory relationship cannot be achieved, the attorney may be discharged. At the point of discharge, the attorney will be entitled to a fee for services rendered in keeping with the terms of the employment contract.

If you suspect that your attorney's conduct is unethical, you may file a complaint with the local Bar Association. State Supreme Courts also may disbar, suspend, or censure an attorney for unprofessional conduct. If you wish to take legal action against your attorney, you will need to do so through another attorney. Be certain of your facts before you undertake this course of action.

Bankruptcy

Bankruptcy law is complex, and attorneys sometimes tell their clients prematurely that there is no value in filing a civil suit against a drunk driver because, even if he is found liable, he cannot obtain bankruptcy to avoid payment. That may not be true. Personal bankruptcy and corporation bankruptcy options differ.

Personal bankruptcy options are Chapter 7 (Liquidation) and Chapter 13 (Wage-Earner Plan.) Chapter 7 of the Federal Bankruptcy Code as amended in 1984 (Section 523(a)(9)) forbids the discharge of any debt arising from judgment or consent decree of liability for injury and damage incurred as a result of the debtor's operation of a motor vehicle while legally intoxicated.

Language of the 1984 amendment is vague, but case law has consistently found that the plaintiff-victim in a drunk driving crash does not need to file suit and obtain judgment before the defendant files for bankruptcy in order for the judgment to be found non-dischargeable. Likewise, courts have consistently found that the bankruptcy court need not address the legal level of intoxication required by the criminal courts as a pre-requisite to establish non-dischargeability.

In federal legislation suggested by MADD and passed in 1990, Chapter 13 of the Federal Bankruptcy Code, the Wage-Earner Plan, was also amended. The new amendment no longer allows those convicted of drunk or drugged driving offenses to obtain bankruptcy under Chapter 13. The new makes clear that debts arising from drunk driving or the use of drugs is now a nondischargeable debt. The victim does not need to secure a judgment or consent decree against the drunk driver before making a claim of non-dischargeability, and it extends the coverage of the provision to those who drive while impaired by drugs as well as alcohol.

Qualified bankruptcy attorneys should always be consulted in these cases. The American Bar Association and most State Bar Associations have Bankruptcy Sections which can refer you to qualified attorneys.

Crime Victims Compensation

All states now have Crime Victims Compensation programs which reimburse crime victim families for out-of-pocket, non-property expenses. These benefits were designed for victims in situations where insurance and civil recovery are not available. Benefits include funeral expenses, medical expenses, loss of wages, and other financial needs deemed reasonable. In some states, dependents are eligible for lump sum benefits. All states with Victim Compensation programs provide for mental health counseling for survivors of someone killed. Some states provide emergency funds which are available within a few weeks of the crash.

Since regulations vary from state to state, it is wise to call the prosecutor, the police department, your MADD chapter victim advocate to request a Victims Compensation Application. If you are unable to learn about the program, call the switchboard of your state capitol and ask to be connected to the person in charge of the Crime Victims Compensation Program in your state.

The crime must be reported to the police within three to five days, and the victim family must cooperate with law enforcement officials in the prosecution of the case. These requirements are seldom a problem in cases of drunk driving. Application for Crime Victims Compensation must be made within 6 to 12 months.

If you are having difficulty with funeral expenses, inform your funeral director that you will be applying for Victims Compensation to cover the funeral expenses. The director then may be willing to forgo billing for the funeral for the time being. You will be expected to submit bills or receipts with the application. Except for emergency awards, applications take weeks or months to process. Application procedures should be started as soon as possible. Additional bills may be submitted later.

Restitution

Restitution is money or services ordered by the court to be paid directly to the victim or surviving family by the offender after final conviction. The purpose of restitution is to make the offender personally accountable for his crime and to restore, in part, the victim's loss.

Victim requests for restitution can cover medical and funeral expenses, lost wages, ongoing counseling fees for survivors, or other expenses considered reasonable by the court. Requests for restitution must be accompanied by bills or receipts and should be presented to the criminal court judge through the prosecutor or probation department prior to sentencing of the offender. Restitution requests are usually attached to the presentence investigation prepared by the probation department.

Although restitution is a very sound concept, it is not a quick or easy solution to financial stress. It is dependent upon conviction of the offender, which rarely occurs until months or years after the crime was committed. Offenders sometimes have limited income from which to pay restitution, especially if they are sent to prison. Procedures for the collection of restitution from the offender and transferring

it to the victim are rarely adequate. And, once the offender is out of the criminal justice system, a means of monitoring the payments no longer exists.

Some states now require that restitution be ordered unless the judge states in the record the reason for not doing so. A few states automatically attach a civil lien to the criminal judgment in order to assure payment after the criminal case is closed.

In most cases, unless a substantial lump sum of restitution is ordered immediately following trial, chances of actually receiving the restitution are slim.

State and County Social Services

Families with limited income and resources who are faced with death or incapacitating injury, may be eligible for emergency short term assistance from social service agencies. This assistance may include vouchers for rent, utilities, food and medication, but rarely cash.

A parent of dependent children may, if the wage-earner was killed or injured, qualify for Aid to Families with Dependent Children (AFDC) and should apply at the local State Department of Health Services or equivalent agency. Food stamps are also available for low income, low resource families. It usually takes several weeks to obtain AFDC or food stamps.

Parents of injured children up to age 21 may apply for Crippled Children's Services. Ask hospital social service workers for information. Shriner's Hospitals also provide free care for children who qualify.

Loan closets for medical equipment are available in numerous communities. Local service clubs frequently loan items such as crutches, wheelchairs and hospital beds. Hospital social service departments or the Red Cross Local charities and churches willing to help may be identified through a call to United Way or local crisis hotlines. Victim witness programs and victim support groups also be aware of financial resources.

Civil Rights/Legal Assistance for the Disabled

A disabled person has rights guaranteed by law to education, employment, health and other public or private services which are federally funded. If an individual feels that his or her rights of a loved one are being violated by a school, hospital, or social service worker, write or call your regional Office for Civil Rights of the Department of Health and Human Services.

Every employer doing business with the federal government under contract for more than \$2500 must take "affirmative action" to hire handicapped individuals. An individual who believes he or she has been denied a job because of the disability by such a contractor should file a complaint with the Office of Federal Contract Compliance, Department of Labor, Washington, D.C. 20210.

A Final Reminder

Try to refrain from making any unnecessary major financial decisions until a year or more after your loved one's permanent injury or death. Decisions about revision of your will, moving, investments, sale of properties, etc., can be considered after your life has settled down a bit and your capacity for clear and rational thinking has been restored.

MADD HOME PAGE

Brain Injury and Alcohol Dually Intertwined

By George A. Zitnay, PhD

According to the former National Head Injury Foundation Substance Abuse Task Force, "neither age, nor occupation, nor any other factors place an individual at greater risk of traumatic brain injury than alcohol."

Alcohol use is a predisposing factor in 35–72 percent of all brain injuries. Blood alcohol content (BAC) is highest in motor vehicle crashes. While these statistics are staggering, surprisingly, only 55.2 percent of trauma centers surveyed said they routinely obtained blood alcohol levels from individuals entering the center.

The impact of alcohol on motor vehicle crashes is devastating. Nearly 50 percent of all brain injuries result from motor vehicle wrecks. Studies over the last decade have shown that 54–86 percent of all persons admitted to the hospital following a motor vehicle crash had positive BAC levels. The combination of alcohol and motor vehicle incidents among teenagers is very well-documented, and is a major contributing factor in the high level of brain injury fatalities among teen drivers.

According to the Fatal Accident Reporting System developed by the National Highway Traffic Safety Administration (NHTSA), 48.7 percent (1990) and 46.8 percent (1991) of 15- to 20-year old victims of fatal motor vehicle crashes had elevated blood alcohol levels. In a study examining a series of individuals admitted to hospitals for brain injury, 32 percent were found to be intoxicated at the time of admission. Average blood alcohol levels among these individuals was 220 mg/d.

Coincidentally, individuals with head trauma are often seen for emergency treatment between 11 p.m. and 3 a.m.—times of high drinking and driving activity.


The association of alcohol and brain injury has significant pathophysiologic outcome and treatment implications. Studies have been conducted on the effect of concurrent alcohol intoxication on the chemical presentation and course of individuals with brain injury. In a series of 520 people in an emergency room diagnosed with brain injury, 37 percent were intoxicated. Individuals under the influence of alcohol were more likely to require intubation, have an intracranial pressure bolt inserted, develop respiratory distress requiring ventilator support, or develop pneumonia.

The extent of damage with a brain injury is also strongly influenced by the presence of alcohol. In a comparison of multiple physiologic and anatomic parameters in a series of individuals with brain injury, persons who abused alcohol demonstrated greater volumes of cranial hemorrhage. In one year of follow-up evaluations, brain atrophy in the group of alcohol users was more pronounced.

Not only does alcohol consumption increase the risk of brain injury and impede recovery, it may also adversely affect rehabilitation. Research in a series of subjects on the effects of alcohol abuse and intoxication at the time of injury and the duration of post-traumatic amnesia indicated alcohol consumption at the time of injury proved to be a significant predictor of later memory deficits. This effect occurred even if the period of post-traumatic amnesia was brief.

The link between impaired driving and motor vehicle crashes is well-established. The connection between alcohol, driving and brain injury has been demonstrated in the studies and information mentioned in this brief article. In many instances, such incidents can be avoided and emphasis must be placed

on preventing further crashes, injuries and fatalities. Preventive countermeasures have had a dramatic effect on motor vehicle crash fatalities, which have progressively decreased in the United States from 39,170 in 1988 to 34,293 in 1994. The same energy must be channeled into developing public awareness programs about drinking, driving and brain injury.

Education is especially important for individuals who continue to abuse alcohol during rehabilitation following brain injury. Models that employ some common substance abuse strategies, including education, behavior therapy, relapse prevention, and comprehensive aftercare programming need to be organized and encouraged. 

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CLOSED HEAD INJURY

Drunk driving crashes are a leading cause of traumatic brain injury, referred to as closed head injury when the skull has not been fractured. A second tragedy of many persons who have sustained traumatic brain injury is the fact that they sometimes are not properly diagnosed and treated.

Society in general, including some health care providers, have the mistaken notion that in order for a person to have traumatic brain injury, he or she must suffer coma, skull fracture, lacerations and broken bones, or at least have been "knocked out." This is simply not true.

What has been labeled "mild" closed head injury can be a significant traumatic brain injury which impacts family, personal relationships, employment, and general well-being.

It is not unusual that, immediately after the crash, a head-injured person can discuss what happened with law enforcement officers and emergency medical personnel, and even exchange drivers' license and insurance information. Later, when the time the consequences of the head injury begin to interfere significantly with the person's life, neither the injured individual nor the family relate the problems back to the crash.

Although different persons have varying problems, common symptoms of head injury include cognitive (thinking) problems such as:

- Difficulty paying attention and concentrating
- Problems making sense of what has been read or seen on television
- Forgetting things · Finding it difficult to learn new tasks or complete tasks
- Confusion in finding places or following geographical directions
- Unclear thinking
- Inflexibility
- Diminished organizational skills
- Poor decision making, judgment, and reasoning

Brain injury can also cause physical problems such as fatigue, restless sleeping, dizziness, headaches, and speech problems. All of these decrease a person's tolerance for stress. Persons with head injuries are at risk of being overwhelmed by overload. They may be less flexible in problem solving, having exhausted their coping reserves.

Psychological problems can also result from head injury. Sadness and despair, denial of limitations, lack of interest in previous activities, and/or intense or highly changeable emotions bother many persons with head injuries. Some become irritable about many things (and people) in their lives and may even fly into unexpected rages. Other common psychological consequences are acting impulsively without considering the consequences, lack of self-awareness or of their impact on others, increased or decreased sexual interest, and lack of appropriate social behavior. Some people recognize the changes which have occurred; others do not. Few recognize their own inappropriate social interactions. Some resent others who attempt to control or change their behaviors, which can be very frustrating for family members and other caregivers.

Because some of the symptoms of head injury are similar to those of depression, a head injury diagnosis is frequently over-looked.

Families often find the symptoms of head injury easier to bear immediately after the injury than they do later. More attention is paid to other physical injuries than to head injury symptoms in the emergency room or trauma center, unless the head injury is obvious. The family may simply be grateful that their loved one survived the crash.

Even with a recognized head injury, hope is strong at first that full recovery is possible, and unusual statements or behaviors are tolerable. Later, families want their loved one to "behave" or function better, especially when social skills are impaired. With mild to moderate injuries, the symptoms may seem reasonably unimportant at first. Only when a person begins to try to live more "normally" at home, work, or school, do the symptoms become more noticeable and frustrating.

Vehicular Crash Victims

Following are some real stories (names changed) which illustrate the problems commonly associated with closed head injury.

Mary

On her way home from a PTA meeting, Mary was rear-ended by a drunk driver while she was stopped at a stop sign. The drunk driver was only going about 15 mph when he struck Mary's car, and damage to the vehicles was minimal. No one realized that an impact of 15 mph exerted a force of ten times the force of gravity on Mary's skull and brain. Mary had a momentary feeling of being "out of it" and a sore neck developed on her way home, but she was relieved that her injuries were not more serious.

That night, Mary had difficulty falling asleep, but she and her husband attributed it to anxiety associated with the crash. The next morning, Mary had a bad headache, her neck hurt worse, and she could hardly lift her head off the pillow.

After two weeks of difficulties, including an occasional feeling that she was falling over, Mary went to her family doctor who took skull and neck x-rays and told her that nothing was wrong. He prescribed some pain medication and told her to return in a month.

As the weeks and months went by, Mary noticed small memory lapses, increased irritability, difficulty falling asleep and staying asleep, and depression. Her relationship with her husband and children became strained. She had difficulty preparing meals and started avoiding cooking or entertaining out of fear of making a mistake. She began to fear that she was losing her mind, but since her doctor had already told her nothing was wrong, neither she nor her husband attributed her difficulties to the crash.

Jack

Jack had been his company's top salesman for fifteen years. Whenever a tough sale was coming up or a complicated presentation had to be made, the company turned to Jack. His product knowledge, charm, intelligence, and sense of humor contributed to his success.

Jack seemed to be at his best in difficult situations until one night, while he was jogging, a drunk driver drove off the road, struck Jack at a speed of about 10 mph, and knocked him to the ground.

Jack sat on the ground for a few minutes, saw "stars," and felt a little woozy, but was able to

get up As the police arrested the drunk driver, Jack told them he didn't think he was hurt, just a little shaken up He walked the remaining mile home, told his wife what had happened, and went to bed thinking about the sales presentation he was to make the following day.

The next morning, Jack had a dull headache and felt fatigued, but, not being a complainer, he went to work and made the sales presentation During his talk, Jack made a number of mistakes such as forgetting things and not being able to find the right word, but he was able to cover for his mistakes with his sense of humor.

Over the weeks and months, Jack made more and more mistakes, but he resolved to try harder In time, he was afraid to stand up and speak at sales meetings and made excuse after excuse not to speak in public He had great difficulty dealing with customers on a one-to-one basis, and he started to tell off-color jokes that had never been a part of his sales strategy before the crash.

Jack began missing appointments and sometimes got lost trying to find a customer's place of business Rather than admit he was lost, he told his boss that he forgot the appointments.

People noticed that Jack's personality had changed dramatically, that his sense of humor was gone, that he was quite irritable, and that he was becoming more and more depressed He no longer spoke up at sales meetings, and, after missing his fifth appointment in two months, Jack was fired.

Trish

Trish was a brilliant college student, looking forward to beginning her second 8 year at a prestigious college She was on full academic scholarship, majoring in English Literature She was also an accomplished pianist.

While riding to church one Sunday morning, her car was hit by a drunk driver Trish suffered a severely broken leg, several broken ribs, and she required seven sutures to close a cut on her head.

Medical attention was focused on Trish's leg and ribs, and after the sutures were removed and the scar began to heal, no one paid further attention to her head.

Four months later, Trish went back to school, albeit with a limp, and noticed that she was having a much harder time with her studies She was determined to be an excellent student, however, so she devoted most of her time to study It became more and more difficult for her to keep track of her life She became distracted by every little noise as she tried to study, and she felt exhausted all the time She tried to take more and more lecture notes, but they did not make sense when she got home.

Trish also noticed that her piano-playing ability was no longer what it once was, and this, along with the other changes in her life, made her more depressed.

Medical Aspects

Unlike persons with severe brain trauma whose injuries are obvious, people with mild closed head injury may not have obvious medical problems.

What is now called mild traumatic brain injury was referred to by many names throughout the nineteenth century including post-concussion syndrome, minor contusion syndrome, post-traumatic vasomotor neurosis, post-traumatic nervous instability, and post-traumatic syndrome, to name a few.

Although the term "mild" is used to describe the medical aspects of this problem, the difficulties of head injury can be permanent and devastating.

Even when consciousness has been lost for up to twenty or thirty minutes, victims are often sent home from the hospital within twenty-four hours. The family is instructed to awaken the victim every two hours. Reflexes, strength, and other gross measures of the neurological examination may have fallen within normal range at the hospital. Magnetic resonance imaging (MRI), CT scanning of the head, x-rays, and EEG's may have revealed nothing. However, the test results do not mean that the brain has not been injured. These tests have significant limitations and are unable to detect subtle changes in brain function.

Deep areas of the brain are commonly injured in crashes. These sections are 10 called the subcortical areas and are very important for processing information and for communication between different parts of the brain. Since the outer portion of the brain may be working normally, deficits in brain function may not be noticed until complex tasks are undertaken. Complicated tasks are usually not required when one is hospitalized, so deficits may not be noticed until the injured person returns home.

Complex tasks are those which require several portions of the brain to work together simultaneously. Examples are balancing activities, complex hand activities, recognition and drawing of pictures, engaging in conversation without forgetting what the other person said, discriminating sizes and shapes, interpreting touches and feelings, and making judgments.

The diagnosis of mild closed head injury is best made by an experienced physician or neuropsychologist skilled in cognitive perceptual motor testing. Neuropsychological tests are standardized tests which take six to ten hours to complete. They evaluate the function of many different areas of the brain and can show abnormalities that other medical tests cannot detect. The most important evaluation to detect mild traumatic brain injury is neuropsychological testing. This testing should be given several times to obtain accurate findings because many factors, including distraction, illness, or depression, can affect the outcome of testing.

Even though such injury has permanent components, many of the problems can be improved upon with comprehensive interdisciplinary rehabilitation. This includes cognitive rehabilitation and cognitive perceptual motor remediation. Improving these competencies improves confidence, relieves anxiety, and eventually improves function. As rehabilitation helps the victim gain better control over behavior through learning compensatory techniques, higher functioning is accomplished, and sometimes a return to gainful employment becomes possible.

Comprehensive rehabilitation ideally includes treatment from a number of health care providers experienced in treating head injury. These may include a physician (usually a physiatrist), a physical therapist, an occupational therapist, a speech pathologist, a neuropsychologist, a social worker, a vocational counselor, a recreational therapist, a nutritionist, and a case manager.

This list of professionals indicates the complexity of problems associated with head injury. These professionals will work together with the injured person and the family to identify and achieve rehabilitation goals. The sooner treatment is begun, the greater the likelihood of a successful outcome.

It is crucial that people understand that not all physicians are qualified by education, expertise, or training to diagnose and treat mild closed head injury. A physician or neuropsychologist with specific expertise in head injury should be sought.

Before the first appointment, it would be helpful to prepare a written list of problems noticed

since the crash The injured individual may have little insight into the problems, so family observations are critical.

Recovery, even without treatment, is most rapid during the first weeks to months after head injury, unless the brain stem was damaged While rehabilitation is usually of maximum assistance soon after injury, rehabilitation specialists can still help regain function months or even years after injury Don't assume it is now too late for you to be helped Instead, let a professional decide what is still possible for you.

Financia/Employment Aspects

Mild traumatic head injury can not only fool medical technology, but it can also fool people close to the injured person In casual contact, the person might appear completely competent and normal, but when asked to perform to a pre-determined standard such as examinations, written work, or job performance, he may be incapable.

Cognitive skill impairments are sometimes quite obvious to family members or others knowledgeable about traumatic brain injury, but they may seem subtle to employers.

Living in the information age as we do, when the ability to analyze and understand a stream of data is critical to success, head injury problems can cause real trouble.

The student who cannot understand the lecture or focus on reading assignments, the parent at home who cannot organize the day, or the salesperson who cannot communicate the intricacies of a sales presentation, is condemned to failure.

To add to these complications, the person may appear to be psychiatrically normal, and doctors may even have told the family that nothing is wrong, Yet the injured individual knows that things are not right and feels a certain sense of disintegration of his or her personality.

It must be understood that in most tasks, various parts of the brain function together Injury or impairment in any one part may have what is called a synergistic affect on functioning of the entire brain Following are some examples.

Problems with Learning and Memory

While pre-injury learning and memory usually remain unaffected, learning new material and new procedures may prove extremely difficult The injured person may begin to lose things such as car keys and important documents Sometimes even moving office furniture can be quite unsettling Many people are able to return to work at their old jobs, but problems develop when they are transferred or promoted.

Problems with Attention and Concentration

Problems of attention and concentration create the largest barriers to successful vocational rehabilitation The inability to focus on an exam question because a bird is singing outside the classroom, or the inability to follow the boss's instructions at work because of machines running in the background are serious problems.

These kinds of problems usually stem from injury to the front part of the brain referred to as the frontal lobes They are the largest portion of the brain, just behind the forehead and very vulnerable to injury.

People with frontal lobe injury have difficulty holding well-focused conversations, which tends to unnerve friends, coworkers, and supervisors. Such a person may lose track of time and find herself unable to shift attention when interruptions occur. People with frontal lobe injuries may also become emotionally fragile, which further complicates matters.

Problems with Information Processing, Speed, and Capacity

With closed head injury, one's ability to think and react quickly may be impaired.

This causes the person to feel overwhelmed with tasks that were simple before the crash. This not only stresses the injured person but the employer. The frustration makes the cognitive problems worse which can lead to more stress and depression.

Problems with Executive Functions

Planning, identifying priorities, sequencing steps to complete a task, and monitoring one's own behavior are referred to as the executive functions of the brain. Impairment of these functions can be one of the most disabling aspects of the injury because the injured individual is unaware of his or her own shortcomings, such as with Jack.

Problems with Emotions

When the thinking centers of the brain are not able to control the emotional centers, the individual becomes impulsive, disinhibited, and irritable with mood swings and emotional outbursts. Lowered tolerance to frustration can have a devastating impact on human relationships and employment.

The sometimes subtle, negative changes caused by head injury conspire against a person's chances for success on the job. This means a marked decrease in lifetime earnings. The U.S. Department of Labor has defined worker characteristics for successful performance in more than 12,000 occupations. They include:

- Intelligence
- Learning ability
- Reasoning ability
- Mathematical ability
- Language development
- Spatial perception
- Form perception

A mild traumatic brain injury may not affect a victim's overall level of intelligence as measured by I.Q. tests, but impairment in any of the above traits can seriously impact one's ability to work and earn money.

When Jack was injured, he was earning \$41,250 per year. Even with successful treatment, he will require a much less demanding job and may make no more than \$20,000. Assuming that Jack works continuously through age sixty-five, loss of income for him and his family will be about \$851,000 in today's dollars.

Many times, persons with traumatic brain injury are told that since they only have three or four mildly impaired cognitive problems, that they should be able to return to work or get a

new job without any problems This advice is usually not correct.

Crash Reconstruction

Most victims of vehicular crashes do not know exactly how they were injured in the crash This can be understood when one realizes that crashes take only a second or less to happen During this short time period, the human body and brain are exposed to what is called dynamic and impact impulses which produce high level, short duration forces.

As the human body attempts to stop during a crash, opposing forces or inertia forces cause a second collision of the human body with objects or a part of the vehicle A third collision involves the brain crashing against the inside of the skull when the body hits an object or the head suddenly stops.

The head is subject to the same dynamic forces as the rest of the body, and when the skull stops by hitting an object, the brain keeps going and collides with the inside of the skull Thus, a head can be injured at the spot where it is directly hit Additionally, when the skull stops suddenly (as in hitting the ground or dashboard), the soft brain tissue inside may ricochet off the skull on the opposite side or may suffer stretching or tearing injuries Any of these motions can cause injuries to other parts of the brain.

Some injuries harm only a specific part of the brain which controls particular functions For example, injury in the area above the ear primarily affects physical movement or sensation on the opposite side of the body Thus, an injury can particularly impair vision, movement, or thinking if it is localized in particular areas Or it can harm much more of the brain and hinder several kinds of functioning.

From the study of occupant kinematics, it is clear that during a crash, forces over thirty times the victim's weight are involved.

Occupant protection such as seat belts and air bags cannot fully protect a person's head and neck A side impact against a door, even at speeds as low as 10 mph, can have significant force impact on the head Head-on collisions pose an extremely high risk of injury because the body is moving back away from seat belts and air bags The head is snapped backwards and then forward, causing the brain to smash against the back of the skull and then the front of the skull.

Selecting an Attorney

Some people have the mistaken impression that a lawyer is a lawyer Every person who files a law suit deserves a competent and well qualified lawyer with specialized expertise to handle their particular problem, whether it be real estate, corporate and tax planning, or traumatic brain injury.

When victims are injured in drunk driving cases, the State appoints an attorney, commonly called the prosecutor, to handle the criminal case Victims do not pay for this service.

Additionally, crash victims may want to civilly sue the drunk driver, the driver's employer if he was driving on the job, the bar who knowingly served the drunk driver, or sometimes the insurance company While recovery in the criminal case is jail or prison for the drunk driver and sometimes court-ordered restitution to the victim, recovery in a civil suit is always money something many head-injured persons desperately need.

If the offending person or group has recoverable income or assets, it may be in the injured

person's interest to pursue a civil suit Attorney fees are required for this type of suit, and they will be addressed later in this brochure.

Unfortunately, when people are living within crisis, they may not be as careful about hiring an attorney as they should be At a minimum, victims should ask the following questions:

- Do you have specialized expertise in head injury cases?
- How many closed head injury cases have you handled?

An attorney should accept serious responsibility when representing a client suffering from head injury He or she must not only thoroughly understand this type of injury, but also be able to expose defense attorneys who will attempt to decrease the value of the victim's claim.

A competent attorney should know and believe:

- that many head injuries are not diagnosed in the emergency room, and that it may take months or even years before a proper diagnosis is made;
- that head injury symptoms such as memory problems, emotional problems, concentration problems or others noted above are not voluntary or psychological, but are caused by real physical injury to the brain;
- that a person may have walked and talked at the scene of the crash and still have closed head injury;
- that even though a brain injury may be described as mild or moderate, impact to the victim, the family, social relationships, and employment may be far-reaching and severe;
- that a direct blow to the head is not necessary to cause a traumatic brain injury;
- that a skull fracture, cuts on the head, or coma are not necessary for a person to be brain injured;
- that a defense witness neurologist is likely to testify that the person is neurologically sound based on MRI's, CT scans, and skull x-rays, tests that do not detect many components of head injury;
- that head injured individuals are at risk for seizure disorders that may not begin for months or years;
- that defense witnesses will testify that the injured should be able to work, although they will likely not specify a particular job, requiring knowledge and skill of the intricacies of head injury for cross-examination
- that understanding neuropsychology reports and developing neuropsychological testimony so that injury can understand it are crucial.

A good attorney should be willing to take the time to gain a full understanding of how the crash has affected the victim's life This might include looking at Photos or videotapes of pre-crash life and talking with those who can describe that life in detail It might mean spending a day with the injured person to assess problems and deficits first hand The attorney will have to make both the pre- and post-crash personalities and life-styles come alive for the jury.

A good attorney should answer the client's questions in writing, even if they were verbally answered in person or on the phone This prevents unnecessary confusion for the head-injured client A good attorney should maintain an office staff knowledgeable about head injury and committed to being friendly, polite, and patient with the injured.

A good attorney will be able to provide credible expert witnesses such as crash reconstructionists, forensic psychiatrists, vocational economics analysts, neuropsychologists, and others to fully and completely present the case Otherwise, the victim may be not be compensated fairly.

The injured are sometimes more comfortable with an attorney who is committed to head injury prevention and who is actively involved with the State Head Injury Alliance, the National Head Injury Foundation, or Mothers Against Drunk Driving By affiliating with these organizations, the attorney becomes a true advocate for the injured.

In most states, personal injury civil attorneys will consult with clients about their case for no fee or an hourly fee If the attorney believes the case has merit, and if the person decides to hire the attorney, then a contingency fee arrangement is usually preferable This means that attorney fees are not payable until the case has concluded, and the fee will be a percentage of the settlement or judgment.

MADD HOME PAGE

MOTOR VEHICLE HOMICIDE CHECKLIST

DEFENDANT

Assistant District Attorney

A. Complaint/Indictment _____ Amendment(If Necessary) _____

Charges: 1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____

B. Defendant's Record:

	<u>Docket#</u>	<u>Charge</u>	<u>Date Requested</u>	<u>Received</u>
1.				
2.				
3.				
4.				

C. Witnesses (percipient):

	<u>Name</u>	<u>Address</u>	<u>Phone#</u>	<u>Statement</u>	<u>Interview w/ADA</u>
1.					
2.					
3.					
4.					
5.					
6.					

D. Police Witnesses:

	<u>Name/</u>	<u>Department</u>	<u>Phone#</u>	<u>Report in File/Interview</u>
1.				
2.				
3.				
4.				
5.				
6.				

E. Accident Reconstruction Expert:

	<u>Name</u>	<u>Department</u>	<u>Phone#</u>	<u>Report in File</u>
1.				
2.				

F.	<u>Victim's Family</u>	<u>Relation</u>	<u>Advocate</u>	<u>Contact Date</u>
1.				
2.				
3.				
4.				

Impact Statement in File: _____

Family's Expectation of Sentence: _____

Victim's Attorney: _____

G. Medical Records: _____

	<u>Victim/defendant</u>	<u>Hospital</u>	<u>Date Requested</u>
1.			

- 2.
- 3.
- 4.
- 5.
- 6.

H. Cause of Death:

Death Certificate (certified): _____

Autopsy Report: _____

Pathologist: _____

Name	Address	Phone#	Notified for Trl.
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I. ADA View Scene:

Date: _____

J. Operation:

Admission: _____

Stipulation: _____

Witness(s): _____

K. Public Way:

Stipulation _____ (copy in file)

Certified Copy: _____ (copy in file)

L. OUIL:

1. Opinion Testimony: _____

Witness(s) _____

Defendant's/Passanger(s): _____

EMT/Ambulance: _____

Police: _____

Doctor/Nurse: _____

2. Breathalyzer: _____ % Refused: _____ N/A _____

c. 263/5A rights advised by: _____

c 263/5A wall chart: _____

Result in file: _____

Test Administered by: _____

Operator's Certificate: _____ (copy in file)

3. BAC _____ (yes/no) Result: _____ %

Police Request: _____

c.263/5A advised by: _____

Defendant Transported by: _____

Hospital: _____

Blood Drawn by: _____

Lab: _____

Chain of custody(in order):

1. _____

2. _____

3. _____

4. _____

Stipulation: _____ (copy in file)

Certified BAC Results in File: _____

Hospital Records: _____

Expert Witness Needed to Convert:

Name	Address	Phone	Notified for Trl.
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M. Negligence/Recklessness:

Speed Limit: _____ Weather: _____

Speed: _____ Day/Night: _____

Estimated by whom: _____ Lighting conditions: _____

Skid marks: _____ Road conditions: _____

Road surface: _____

Statutes/rules of road violated: _____

N. Discovery:

Answers due by: _____

Answers filed: _____

Commonwealth's discovery filed: _____

Commonwealth's discovery received: _____

O. Recommendation: _____

Reasons: _____



